

Between Betrothal and Bedding

*Marriage Formation
in Sweden 1200-1600*



Mia Korpiola



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Between Betrothal and Bedding

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Marriage Formation in Sweden 1200–1600

by

Mia Korpiola



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Cover illustration: Engagement scene from the Chapter on Marriage (Giftermålsbalken) from a parchment codex, possibly from 1430, containing the mid-fourteenth-century King Magnus Eriksson's *Law of the Realm* (*Magnus Erikssons landslag*), ca. 1350. Judging by her headdress, the woman is a widow actively betrothing herself. UUB B68, 35v. With kind permission of the University Library of Uppsala.

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For A. P. and J. A. B. –
invaluable mentors and dear friends

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INTRODUCTION

- Yes, you see, father, four years ago, the same year I succeeded to the farm, I proposed marriage to Brita of Bergskog...
- She was good-looking, was she not?
- Yes, I say, she had dark hair and clear eyes and rosy cheeks. But she was also competent, so my mother was content that I would take her. It would have worked well, but, you see, the trouble was that she did not want to have me.
- It is insignificant, is it not, what such a slip of a girl wants.
- It was the parents who forced her to say yes.
- How do you know that she was forced? I think she was happy to have as rich a man as you, Little Ingmar Ingmarsson.
- Oh no, she was not happy, but in any case the banns were read for us, and the wedding day named, and even before the wedding Brita moved in to the Ingmars' farm in order to help mother. Mother is becoming old and tired, I must admit.
- I see nothing wrong in all this, father says as if wanting to encourage me.
- But nothing wanted to grow in the field that year, the potatoes failed, and the cows became ill, so that mother and I thought that we were compelled to postpone the wedding for a year. See, I did not consider that it was so fussy with the wedding after the banns had been read, but it was probably old-fashioned to think that.
- Had you taken someone of our kin she would have been patient, says father.
- Oh yes, I answer, I noticed that Brita did not like the delay, but, you see, I did not think that I could afford it. We had had the funeral in the spring and we did not want to borrow money from the bank.
- Yes, it was right that you waited, says father.
- But I still feared that Brita would be dissatisfied that she would have to celebrate the christening ale before the wedding.
- First and foremost one must always ensure that one affords it.
- Selma Lagerlöf, *Jerusalem* (1909, 14–15)

In 1909, the Swedish novelist Selma Lagerlöf wrote her book *Jerusalem*, an account of life in a rural community in Dalarna, a region famous for its adherence to traditional customs.¹ This excerpt of an imaginary discussion between the wealthy and respected young peasant, Ingmar

¹ All translations from Finnish or Swedish into English are mine, unless otherwise indicated.

Ingmarsson, and his deceased father and namesake was not set in early twentieth-century Sweden, but rather some forty years back in time. Both interlocutors, members of a wealthy, traditional and highly respected land-owning peasant family that had been a pillar of the community for many generations, were deeply rooted in old agrarian values and customs. Nevertheless, the discussion clearly reveals that these values were undergoing a transition. The daughter of wealthy land-owning peasants was still supposed to submit to her parents' choice when a clearly advantageous match was proposed to her, even if she considered her would-be spouse ugly and taciturn. As will be demonstrated in this study, the conversation between Ingmar Ingmarsson and his father could almost just as well have been recorded in medieval Dalarna six hundred years previously.

This vignette also perceptively describes the reasons for cohabitation (customarily considered acceptable when the betrothal had taken place and the banns read) before the finalizing of the union through the wedding. Wedding was expensive business, and in the book the failure of the crops and the illness of the cattle tipped the scales in favour of postponing the solemnization. Arranging the funeral of Ingmar's father had been expensive, and Ingmar would also have had to paint his house red before the wedding, something he could not afford because of the dire financial situation.² Nevertheless, although Ingmar's intent had been respectable and his reasons for delay understandable and acceptable, the shame and dishonour of giving birth to a child before the nuptials was too much for his bride. Having become severely depressed and suicidal, finally, in desperation, she strangled the infant she had secretly given birth to. Traditional morality and marriage customs had been eroded for centuries by the absolute, black-and-white sexual morals of the Church, related to ecclesiastical solemnization of the conjugal bond. Ingmar's bride Brita had been torn between then.

In medieval Sweden marriage formation was perceived as a sequence of legal acts or a process that could take many months, even years to complete. The cornerstones of the traditional Swedish marriage process (several stages, formalities, property consequences and collective features) are strongly present in the medieval laws. Several, if not all, of the phases of the Swedish traditional marriage process can be found in a large number of ancient cultures around the world. Anthropologists

² For similar points, see also Telste, "Samliv," 149–150.

have observed that among many peoples the conclusion of the stages of marriage from the agreement to marry to the actual end of the marriage ceremonies could take many years. Acts like the agreement of marriage between two families, the wedding, the public transfer of the bride to the groom, the dowry and the bride price are known in societies all over the world.³

Many scholars focusing on medieval and early modern marriage formation in Europe have described it as a process rather than a single act. Between betrothal, consummation and cohabitation the state of the partners was 'intermediate and in some respects uncertain, for they were neither single nor married'.⁴ In many early cultures the customary marriage rituals were not analytically divided into essential and complementary elements. There was no need for such precision, as the completion of the marriage cycle meant that a matrimonial couple had been created. Rather, it was a preoccupation of lawyers to attempt to distinguish the compulsory elements from the rest. Researchers in other fields have complained that '[d]emographers in their analysis of nuptiality ideally prefer to treat marriage as if it were a discreetly, readily identifiable *event* and easily allocated to a single moment'.⁵ The period between spousals and the church wedding has been described as a transitional and 'liminal phase, a period in which the partners were literally betwixt and between'. An espoused Englishwoman could talk of her 'husband before God', and still make her will as a single woman.⁶

Despite considerable evidence of marriage formation as a process or a series of legal acts, due to the victory of the ecclesiastical notions of contracting matrimony in the course of the Middle Ages, it was

³ Gennep, *The Rites of Passage*, 119–123, 137–139; Westermarck, *The History*, II, chs. 23–26, esp. 389–392, 432–433.

⁴ Reynolds, *Marriage*, 315.

⁵ On the notion of marriage as a process see, e.g. Smith, "Marriage Processes," 44 (italics in original), 46. See also Laslett, *The World we have lost*, 96–97; Origo, *The Merchant of Prato*, 192–195; O'Hara, "Ruled by my friends," 20, 23; O'Hara, *Courtship and constraint*, 30–31, 37, 64; Poos, "The Heavy-Handed Marriage Counsellor," 297; Introduction in *Love & Marriage*, 9–10; Klapisch-Zuber, *Women, Family and Ritual*, 182–183, 187, 189; Roper, "Going to Church," 62, 65–67, 85; Roper, *The Holy Household*, 19, 137–138; Stone, *The Family*, 30; Gaudemet, *Sociétés et mariage*, 29–30, 143, 147–148; Gottlieb, "The Meaning of Clandestine Marriage," 49, 72; Peters, "Gender, Sacrament and Ritual," 64, 82; Hacke, *Women, Sex and Marriage*, 32; Ribordy, *Faire les noces*, xxv; Reynolds, "Marrying," 4–5. Cf. Gillis, *For Better, For Worse*, 7.

⁶ Peters, "Gender, Sacrament and Ritual," 83. See also Laslett, *The World we have lost*, 97.

widely understood as one event or legal act. The union was created upon the exchange of the consent of the parties even if the presence of witnesses and the participation of a priest (or a registry official) were added to the legal preconditions. Thus, the basis of our present-day legal requirements of marriage can be found in the matrimonial doctrine of the Catholic Church as it developed in the twelfth and early thirteenth century after the Papal Revolution.

By the high Middle Ages at the latest, all western and northern European peoples had come under the influence of the Catholic Church. Ever since the early Middle Ages the traditional marriage customs were under the strong influence of the Church, which not only sought to regulate the impediments to marriage, the conditions enabling a valid marriage, but also of the making of the marriage itself. In the early Middle Ages, the Church had concentrated its efforts on enforcing the prohibition of divorce and blatant cases of incest in royal families. Making the conjugal bond was overshadowed by these concerns and received little attention. Traditional regional customs were followed, and generally the Church found nothing to object.⁷ The Roman formless tradition did not insist on formalities and rites as such, provided that the parties consented. But even other traditions existed: marriage was considered legitimate when local customs had been observed. Yet the precondition was that no impediment existed between the couple and that the ecclesiastical rites had been observed.⁸ In the late twelfth century, the prevalence of the so-called consent theory placed less and less emphasis on the rites as such: consent between two *personae legitimae*, capable of marrying each other without any impediment, sufficed for legitimate matrimony.⁹

This model, attributed to the circle of twelfth-century Parisian theologians, made the mutual exchange of consent the focal point of valid marriage. Provided that the couple was otherwise free to marry, the words of consent sufficed even if accompanied by no betrothal, previous agreement, parental consent, property exchanges, transfer of the bride or any other formality. No necessary rites marked the creation of a new conjugal couple and nothing else was prerequisite to the abrupt change in status through the sacrament of matrimony created by the

⁷ Daudet, *Études sur l'histoire*, esp. 24–31, 81–84, 152–161; Wemple, *Women in the Frankish Society*, 75–96; Freisen, *Geschichte*, 75–76, 81–83, 140–141, 158.

⁸ E.g. C. 28 q. 1 d. c. 17.

⁹ Freisen, *Geschichte*, 76–81, 142–143.

words of consent. The Church's policy thus introduced 'a time factor with a sharp limiting point. At five to eleven one is not married, at five past one is'.¹⁰ This was a far cry from the gradual, almost gliding change of status of the secular rituals.

Such a definition of marriage formation, created by the theologians in order to specify when the couple had administered the sacrament to each other, became the hallmark of the marriage dogma of learned law. This precise moment or legal act defining the making of marriage corresponded to the jurists' sense of clarity and unequivocalty. Although classical Roman law had been vaguer in its definition of marriage formation, and Roman marriages included many social, religious or familial rituals, the legal aspect was clearly separated from the social aspect.¹¹

Despite the advantages of exactness and unequivocality, this consensual theory did not fit the current marriage practice of large parts of medieval Europe. While these marriage ceremonies had earlier been based on customary law, under the pressure of the Catholic Church they were marginalized and reduced to mere custom. To supplement this evolution, customary law concerning marriage formation lost much of its significance in many parts of the Continent because of the Church, whose jurisdictional claims to the sacrament of matrimony were universally acknowledged. However, in the field of matrimonial property law, which in many regions was left to secular law to regulate because it did not concern the making of the sacrament, marriage remained more firmly a process involving other necessary legal acts besides consent. Although the ecclesiastical influences were significant and growing in traditional matrimonial law, many older rules regarding the initiation and transfer of property rights were alive and well, even in the later Middle Ages.¹²

The marginalization and abandonment of the secular norms of marriage formation did not befall medieval Swedish law. In Sweden marriage was traditionally made piecemeal, in a process of some duration. Moreover, this main trait was a very enduring one, despite the efforts of the Church to identify one paramount legal act, the mutual exchange of consent, as the determining one. The significant difference

¹⁰ Ariès, "The indissoluble marriage," 155.

¹¹ Gaudemet, *Sociétés et mariage*, 29–30, 143, 153–154; Donahue, "The Case of the Man," 1–2, 13–14. See also Dig. 23.2.6.

¹² Turlan, "Recherches," esp. 480–503, 516; Ribordy, "Mariage," 45–46.

between the popular European wedding customs and the Swedish marriage process was the legal dimension. In Sweden the significance, rights and duties accompanying each stage were engraved in the secular laws and legal practice. Swedish marriage law has been characterized as branded by a tension between the durable Swedish custom of marriage formation and the customs introduced by the powerful Catholic Church, later replaced by a more state-dependent but more efficient Lutheran Church. The process of change ultimately resulted in the disappearance of the old system of contracting marriage, but this path was both hesitant and slow.¹³ This description applies to this study. There were two partially competing, partially intertwined ways of contracting marriage in medieval and early modern Sweden.

In this book, I argue that the profound inherent disparity between these two ways of contracting marriage does not chiefly lie in differences of origin or underlying motivation, but in their different understanding of marriage formation. Ecclesiastical and learned law regarded marriage formation as a clearly distinguishable act in time and place, while the Swedish lay society regarded it as a process. In the period under research, the traditional secular Swedish marriage was a legal process taking other important aspects into consideration: property exchanges, publicity, parental consent and the status of potential children. There were some deep-rooted features of Swedish society that help to explain the longevity of the marriage process. The Swedish legal process of marriage formation was, despite its formalism, more flexible and more sensitive to the basic conditions of people's daily life. While learned law regarded marriage formation and the accompanying questions of children and property as an either-or affair, the popular Swedish perception was more adaptable and fluid. This distinction also provides the clue for the choices of marriage formation made by the population.

Even in another respect Sweden differs from many other European regions where marriage was also customarily celebrated through several stages. In Sweden the customary secular marriage process and all its stages were explicitly written down in secular law compilations, first in provincial and later royal laws. Once written down, the Swedish marriage norms proved to be relatively stable. Nevertheless, canonical marriage law was undoubtedly observed in later medieval Sweden, and the secular laws contain sections about ecclesiastical jurisdiction

¹³ Carlsson, *Jag giver dig min dotter*, II, 6.

of marriage, ecclesiastical solemnization and consent, among other things. The Catholic Church also Christianized some customs, such as the bedding, by giving them Christian contents and attaching ecclesiastical rites to them.

In the first chapter I will analyse the traditional features of Swedish marriage formation as they appear in the Swedish medieval sources. By that time canonical marriage law had undergone vigorous development in the course of the twelfth and thirteenth centuries. The canonical doctrine of marriage formation, which defined one moment as the decisive one for the creation of the sacrament of matrimony, will be focused upon in chapter two. In order to be able to investigate the development of the Swedish marriage formation more closely, I will focus on the phases and intensity of the reception of the canon law of marriage in medieval Sweden. What happened when the customary Swedish matrimonial law came in contact with the norms and the powerful legal machinery of the Catholic Church, characterized as the ‘first modern state’?¹⁴ An effort to answer this question is made in chapter three.¹⁵

The medieval Church and its canon law—or the *ius commune*¹⁶ for that—are not to be pictured as ‘single, uniform, monolithic institution[s]’. Nor is one to see canon law as completely homogeneous, but rather as a legal system containing space for regional variation.¹⁷ Kenneth Pennington has stressed that the *ius commune* acted as ‘an intellectual model, not a tool of conquest’.¹⁸ R. H. Helmholz also reminds that ‘[t]he medieval canon law admitted, or at least tolerated, a disparity between formal rule and local customary practice’. Such regional variations are also to be found in the domain of matrimonial law: abjuration *sub poena nubendi* and notarial marriage formation are cases in point.¹⁹ I will compare Swedish marriage formation with canon law and regional

¹⁴ Berman, *Law and Revolution*, 113.

¹⁵ Bååth, *Bidrag* and Inger, *Das kirchliche Visitationsinstitut* are still the best accounts.

¹⁶ On the different uses and senses of *ius commune*, see Brundage, “Universities,” 237–240. I use the concept here in its most common meaning, as a legal system or structure comprising of canon law and Roman civil law.

¹⁷ Brundage, *Medieval Canon Law*, 86. See also D’Avray, “Marriage ceremonies,” 115.

¹⁸ Pennington, “Learned Law,” 200.

¹⁹ Helmholz, *Roman canon law*, 11–12; Helmholz, *Canon Law*, 145. See also D’Avray, “Marriage ceremonies,” 115; Brozyna, *Ecclesiastical Courts*.

studies on the application of ecclesiastical matrimonial law in order to assess whether Sweden was unique in some sense.

In Sweden, matrimonial and criminal cases alike were handled by the bishop personally (especially in the later Middle Ages in collaboration with his chapter) or by an official, archdeacon or rural dean empowered by him. There were no rivalling independent jurisdictions like, for example, the archdeaconal courts in England and on the Continent. Moreover, the episcopal courts, or the 'bishop's assizes', were unprofessional without university-trained officials, notaries, proctors or advocates.²⁰ No actual medieval ecclesiastical court records have survived in Sweden, which makes an evaluation of the extent of a general Swedish conformity with the canonical marriage norms unfeasible. For this reason, my conclusions about the trends of development of marriage formation in late medieval Sweden will remain somewhat impressionistic. For the medieval period especially, I have been forced to use all kinds of sources to supplement the defects of the ecclesiastical records in an attempt to reconstruct a multi-faceted picture of Swedish matrimonial law and practice. However, this material informs us more about the practices of the nobility and townspeople, while there is less information concerning the customs of the Swedish peasantry.

It is now generally accepted that the European Reformers, especially in their legal pronouncements, were heavily indebted to the canon law of marriage.²¹ In Sweden, the jurisdiction of the Lutheran Church also came to rely on the old structures, and its dogma of marriage formation did not signify any radical break from the Catholic past. The impact of the Reformation on Swedish matrimonial law in general, and on marriage formation in particular, will be the subject of the fourth chapter. Particular interest is paid to the aspects of continuity and change in Swedish post-Reformation law and practice regulating marriage formation.

Beginning in the 1590s, the availability of extant ecclesiastical sources improves dramatically. The act books of the Swedish cathedral chapters (*domkapitel*), Uppsala (1593–1608), Västerås (1595–1603), Stockholm

²⁰ For competition between different ecclesiastical jurisdictions, see e.g. Harrington, *Reordering marriage*, 110–112; Helmholz, *Roman canon law*, 20–27. For professionalized church courts see, e.g. Brundage, *Medieval Canon Law*, 134–139.

²¹ E.g. Wendel, *Le mariage*, 5–60; Dieterich, *Das protestantische Eherecht*, 82–83, 112–118, 181–185; Harrington, *Reordering marriage*, 146–152; Safley, *Let No Man Put Asunder*, 28–29, 38. Cf. Carlsson, *Jag giver dig min dotter*, II, 91.

(1595–on), Linköping (1600–on) contain records of the day-to-day activities of the chapters, the major part of which involved matrimonial matters and sexual crimes. Even these records are incomplete, but as the regions surrounding Uppsala, Västerås, Stockholm and Linköping represent the most advanced and central areas of late sixteenth- and early seventeenth-century Swedish and, therefore, I would suggest that the developments perceived in the records are indicative of somewhat later trends in more remote regions.

I will begin the concluding section of this study with a sketch of the main lines of development of marriage formation in Sweden as I have interpreted them on the basis of the source material. I will argue that the transformation of the Swedish marriage process was almost glacially slow and that it was not stripped of its last vestiges until the late twentieth century. Finally, I will explore the reasons for the tardy disappearance of the old Swedish perceptions on marriage formation. The traditional marriage process encountered criticism, especially from the Lutheran Church, and statutes were devised to restrict its length and the lack of ecclesiastical control of the process, among other aspects. The Swedish perceptions took into consideration many matters important for ordinary people, such as property issues. The longevity of old customs can partly be credited to their genuine popular appeal, partly to the institutional support of medieval laws that remained largely the basic structure of the norms until the 1730s. All legal history research deals with continuity and change. This book is no exception, but its focus is by and large on the continuity and perseverance of traditional marriage customs.

Medieval and Early Modern Swedish Society

The medieval kingdom of Sweden was the north-eastern outpost of western Christianity. Between about 1100 and 1200 Catholicism was firmly established in most of present-day Sweden, apart from Lapland in the far north and Finland in the east.²² The archdiocese of Uppsala (*Upsalia*) was founded in 1164. The other Swedish medieval dioceses were Linköping (*Lincopia*), Västerås (*Arosia*), Skara (*Skaris*), Strängnäs (*Stregnesia*), Växjö (*Wexonia*) and Turku (*Aboa*). The Church brought with

²² Gräslund, "Religionsskiftet i Norden," 13.

it its legal system and canon law, but also literacy and a culture based on texts. The traditional oral legal culture of early medieval Sweden was gradually transformed into a literary one.²³ The provincial council of Skänninge of 1248, which organized the Swedish Church in accordance with the requirements of canon law, has been interpreted as a sign that Sweden had truly become a part of Catholic Europe.²⁴

Geographically, the medieval Swedish realm covered mostly the area of present-day Sweden, apart from the southernmost area of Skåne (*Scania*), which belonged to Denmark, and Jämtland, which was then a part of the kingdom of Norway.²⁵ Present-day Finland was mostly in Swedish and Catholic hands, while the people living in the frontier zone of Karelia, between eastern and western influences, were pagans beginning to convert to Orthodoxy.

Medieval Sweden was predominantly rural, with very small towns. The capital city, Stockholm, with its 5,000–7,500 inhabitants was by far the biggest town, while its population may have been around 9,000 in the 1580s. The population of Turku (*Åbo*, *Aboa*) was circa 1,500 persons at the end of the Middle Ages, while by 1560 the population had more or less doubled. Uppsala, Kalmar, Söderköping and Gävle had populations that were somewhere between one and three thousand inhabitants by 1571, while Vadstena, Västerås, Linköping and Arboga had 500–1,000 residents.²⁶ The Swedish towns were tiny and politically insignificant in comparison with the rich, powerful and independent great cities of the Continent. Until roughly the mid-fifteenth century, the German merchants dominating the larger Swedish towns were a channel through which foreign influences and material goods reached the country.

In 1600, Sweden and Finland (excluding the Baltic territories) had a total population of about 1.2 million inhabitants. About 3–4 per cent comprised of nobility, clergy and burghers, while more than 95 per cent were peasants living mostly in small villages formed by only a handful of farms. Central Sweden was more densely populated. In 1611 there were 400–500 noble families of a 1.3 million population,

²³ Lupoi, *The Origins*, 282; Stock, *Listening*, 3.

²⁴ Ljungfors, "Mötet i Skänninge," 5; Gräslund, "Religionsskiftet i Norden," 11–13; Skovgaard-Petersen, "Kirkens etablering," 60–69; Brilioth, *Svensk kyrka*, 161.

²⁵ Parts of Jämtland belonged in the Middle Ages to the archdiocese of Uppsala.

²⁶ Nikula – Nikula, *Turun kaupungin historia*, 127; Österberg – Lindström, *Crime and Social Control*, 21, 58. Schück (*Stockholm*, 97, 341) has estimated the population of Stockholm in the late fifteenth century to have been 6,000–8,000 inhabitants.



Source: Salonen, *The Penitentiary as a Well of Grace*, 433 (modified).

Map of Late Medieval Sweden

but about fifty to sixty-five per cent of these nobles were very minor nobility, hardly distinguishable by their income from wealthy peasants.²⁷ The land was mostly tilled by self-sufficient landowning farmers, who grew corn and reared cattle on a small scale. Peasants fished and hunted especially outside the intensive and short summer period.²⁸ In the course of the Middle Ages, however, the percentage of land owned by the small-holding farmers themselves was on the decline, especially in southern and central Sweden, as peasants had increasingly become tenants to ecclesiastical and noble landowners.

In 1560, after the Reformation, 47 per cent of the land in the Swedish part of the realm was peasant-owned, about 30 per cent owned by the Crown and 22 per cent by the nobility. The lands of the nobility, however, were the best in the country and normally situated in the fertile plains. At the end of the Middle Ages, *ca.* 95 per cent of the farms of the Finnish part of the realm were still owned by the peasantry.²⁹ The main features of the Swedish medieval economy were the insignificance of foreign trade, the autarky of the country, the paramount importance of agriculture and weaker self-sufficiency of households deriving from the communal and uniform cultivation system of the villages. From a comparative perspective, the sixteenth-century Swedish economy was extremely backward: an overwhelming majority of the farms were smallholdings, a natural economy prevailed in much of the country, and the level of agricultural commercialization was exceptionally low.³⁰

The Swedish household, much like the German (*das ganze Haus*), was mainly based on a nuclear couple, their children and servants, headed by a man (husband, father). Women were not categorically excluded from the position of head of the household. Although married women and unmarried maidens were under the legal guardianship (*målsmanskap*) of their husbands and fathers (or, lacking fathers, under their closest male relative), widows had powers equal to those of men as heads of households. The household was also an economic unit, requiring the labour of both husband and wife. The presupposition was that a man about to get married should be able to support himself, his wife

²⁷ Lindstedt Cronberg, *Synd och skam*, 80; Anderson, *Lineages of the Absolutist State*, 180.

²⁸ Heckscher, *An Economic History of Sweden*, 22–24, 28–29.

²⁹ Jutikkala, *Talonpoika*, 13–14; Österberg – Lindström, *Crime and Social Control*, 9.

³⁰ Heckscher, *An Economic History of Sweden*, 18–20, 25–29, 32–36, 59–68, 77–78; Anderson, *Lineages of the Absolutist State*, 178–179.

and family, while marriage could be delayed for a long time because of the lack of economic self-sufficiency. When a couple married, the spouses usually brought property into their communal use and set up a household of their own.³¹ However, in the easternmost regions of the country, i.e. Karelia, the extended family was prevalent.

The medieval Swedish realm was governed by an elected king, whose judicial powers expanded rapidly in the course of the Middle Ages. The knightly class, performing equestrian service in return for the exemption of their land from taxation, was being created in the thirteenth century. The electoral monarchy caused instability in the political system: only one king in medieval Sweden was neither deposed nor enthroned as a pretender.³² The political factions acted as kingmakers, and high politics were tempestuous, while rivalling camps sought support from foreign (especially Danish) monarchs and the Church.³³ When Queen Margaret of Denmark (r. 1388–1412) united the three Scandinavian kingdoms of Denmark, Norway and Sweden under one crown, the resulting so-called Union of Kalmar brought peace temporarily between the monarchies. But suspicion and revolt soon followed, and the hallmarks of the turbulent over eighty-year period until the ascension of King Gustav I Vasa (r. 1521–1560) in 1521 were factionalism, political instability and war.

Medieval Europe is usually perceived as a crazy mosaic of different jurisdictions of various sizes. Several overlapping and parallel legal systems, norms and jurisdictions were simultaneously in force throughout the period. Under such circumstances, jurisdictional disputes were unavoidable. The Swedish system was much simpler in comparison to the asymmetrical and haphazard Continental quilt. Until the early seventeenth century, justice was largely meted out at the local level, and the lower courts freely considered the circumstances of the cases, often reducing the fine if there were mitigating circumstances, if the culprit was poor, or if the punishment was considered unduly harsh for the offender. The collective features of justice were present in the central role of the injured party and a tendency to reconcile the parties through mediation in disputes and lesser crimes. The community was represented in the *nämnd* or ‘jury’ and in various other roles authorized

³¹ See e.g. Hansen, *Ordnade hushåll*, 144–145.

³² Aalto, “Keskiaika,” 13.

³³ See also Bååth, *Bidrag*, 13–16.

by the court, such as in assessing damages or determining boundaries between villages.³⁴ Executions were relatively rare for crimes other than murder or homicide, treason, robbery, grand larceny, bestiality, bigamy or incest (after the late fifteenth century). Fines and damages were often used in lieu of capital punishments and mutilation. This kind of more communal and conciliatory justice can especially be observed in rural Sweden, where small and closely-knit communities settled disputes mostly within themselves.³⁵

The judges presiding at Swedish assizes were usually local noblemen, later their paid substitutes, who had considerable interest in mitigating most capital punishments to fines. If the criminal was sentenced to death, his chattels were confiscated and his family often reduced to penury. Such harshness could leave the lands unfarmed, which was hardly in the interests of the landlords. Moreover, if the offenders were noblemen's tenants, a third of the fines generally went to the landowners unless the crime was heinous. Since the late fifteenth century, the nobility had insisted that, as lords of their estates, they should receive the royal third of all their tenants' fines, a claim the Crown was unwilling to grant because of the financial loss involved. In the late Middle Ages and the sixteenth century the local communities were increasingly facing a judicial power struggle between the nobility and Crown in which local and national power and influence on one hand and money on the other hand were at stake. The Crown was more immediately interested in gaining control of the secular court system and transforming it from a communal arena to a 'theatre of power'. This was achieved in the course of the seventeenth century.³⁶

As feudalism in its classical sense never reached Sweden, manorial courts and separate noble jurisdictions were rare. Towns had their own courts involving the mayor(s) and town councillors. The rest of the countryside was divided into hundreds (*härad*) in which assizes (*ting*) were normally convened three times a year. These assizes were presided by noble itinerant judges who adjudicated together with a jury of twelve men (*nämnd*), peasants living in the hundred. The country was

³⁴ Letto-Vanamo, *Käräjähysteisön oikeus*, esp. 189–225; Almquist, *Den svenska processrättens historia*, 4–5. For the classification of features of 'traditional law' (*justice traditionnelle*) as an opposite of learned or 'state law' (*justice étatique*), see Hespanha, "Savants et rustiques," 8–14.

³⁵ E.g. Ylikangas, *Valta ja väkivalta*, 97–130.

³⁶ Taussi Sjöberg, *Rätten*; Letto-Vanamo, *Käräjähysteisön oikeus*, 189–225. See also Hespanha, "Savants et rustiques," 11–16 and *passim*.

also divided into larger districts (*lagmandöme*), each of which with their own *lagman*. The *lagman*, literally ‘law man’, was a nobleman, acting as a higher judge. The royal assizes convened in each province and there the king or his representatives administered justice. As there was no firm hierarchy of courts before the early seventeenth century, all these courts could hear cases in the first instance, but both the *lagman*’s and the royal assizes could also hear appeals from the lower courts.³⁷ That these judges, jurors and officials were laymen without university degrees or legal education until the mid- or late seventeenth century is a fundamental and characteristic feature of Swedish law. The secular justice was public and oral until well into the seventeenth century and further. Some noblemen acting as judges had studied at foreign universities, but these were individual exceptions to the rule: virtually all the rest had practical experience of the law.³⁸

The Swedish monarchy was developing into an increasingly absolutist regime during the reign of Gustav Vasa: campaigns to professionalize the administration had been initiated and the royal bureaucracy was rapidly growing. This was a precondition in improving the royal finances through more developed taxation, although these were still mainly paid *in natura* in the late sixteenth century. Sweden developed a standing army, largely employed against its neighbours during recurring warfare and territorial expansion.³⁹ The law had also an important part to play in the centralization and growing royal powers. As a result of this legal change, the Swedish court structure underwent a considerable transformation in the late sixteenth and seventeenth centuries, part of what can be called the great premodern ‘judicial revolution’ of the Swedish legal system. The establishing of the royal Courts of Appeal in the first half of the seventeenth century was the principle means to this end, but there had been several earlier reforms leading up to this. The kings were the prime movers behind this development. Not only was justice an ideologically important area of kingship, but it was also a source of revenue and power.

The sixteenth century saw the kings issuing more unilateral policy ordinances on various topics, including criminal law. The royal ordinances rendered the law increasingly severe but also repeatedly insisted

³⁷ Almquist, *Den svenska processrättens historia*, 1–8, 10–16. On the *nämnd*, see Letto-Vanamo, *Käräjäyhteisön oikeus*, esp. 103–132, 142–148, 226–243.

³⁸ Almquist, *Den svenska processrättens historia*, 3–13, 34.

³⁹ Anderson, *Lineages of the Absolutist State*, 174–178, see also 17, 29–42.

that the lower courts, the local assizes and town courts, sentence the offender according to law. The prerogative of pardon and mitigating the rigours of the law belonged to the king only. It took several decades for the Swedish Crown to achieve this goal. Only through the establishing of the Courts of Appeal did the king succeed in forcing the lower courts to sentence according to the letter of the law, while the power to mitigate was given to the Courts of Appeal, ultimately to the king. The five Courts of Appeal, founded between 1614 and 1648, became the principal means of intensified royal control of the justice system.⁴⁰

Although Swedes had displayed some knowledge of Roman law ever since the late thirteenth century, and individual Swedes were doctors *utriusque juris*, the medieval period and the sixteenth century can be classified as the stage of the pre-reception of Roman law as part of the learned *ius commune*.⁴¹ If the *ius commune* can be perceived as ‘a cauldron from which much of the precious metal of all European legal systems emerged,’⁴² for Sweden, a distinction has to be made between the reception of canon and Roman law. Undoubtedly, in Sweden the medieval period was first and foremost characteristic of the reception of canon law—a phenomenon in itself typical of northern Europe.⁴³ It has been shown that especially the second part of the fifteenth century was in Denmark a period of rapid increase in the number of clerics with university degrees. Also the interest in canon law studies had been growing among prelates at least since the end of the fourteenth century.⁴⁴ This observation undoubtedly also applies to Sweden although on a more modest scale.⁴⁵

German influences grew stronger in the course of the sixteenth century. Gustav Vasa employed for some time German lawyers, and it became a norm that Swedish scholars, future prelates and high officials, studied for some time at German universities. With the development

⁴⁰ Almqvist, *Den svenska processrättens historia*, 18–19, 22–24; Thunander, *Hovrätt*, 8–20. See also Kotkas, *Suosioista ja armosta*.

⁴¹ E.g. Korpiola, “On the Influence.” I talk throughout this book of ‘learned law’ as an opposite to the Swedish notion of law as mainly administered by laymen without a university education. Cf. Pennington, “Learned Law.”

⁴² Pennington, “Learned Law,” 209.

⁴³ See Brundage, “Universities,” 250–253.

⁴⁴ Ingesman, “A Canon Law Culture,” 66–72, 76–77.

⁴⁵ See e.g. Losman, *Norden*, 254; Nuorteva, *Suomalaisten*, 36–41; Korpiola, “Literary Legacies.”

and expansion of the royal judicial machinery in the course of the early seventeenth century, there was a demand for university-trained lawyers. Given the sixteenth-century reception of Roman law in Germany, it is hardly surprising that Swedes studying there also demonstrated a growing interest in Roman law. This appeal also resulted in a new start for law studies at the University of Uppsala.⁴⁶ When the Swedish realm expanded to include Baltic areas, the German-speaking nobility continued to apply German–Roman law, which meant that the king and the Svea Court of Appeal particularly were obliged to adjudicate in cases involving foreign law and Roman legal terminology. Similarly, the more active commerce and economic contacts brought lawsuits with foreign merchants and involved more developed legal instruments and business dealings, while Roman civil law had for centuries catered to the needs of capitalist relations of late medieval increasing commercialism and manufacturing.⁴⁷

Even after the Reformation, matrimony largely remained under ecclesiastical control. A more effective *ex officio* control and recourse to the secular arm were important means of enforcing the ecclesiastical norms. Thus, especially in the seventeenth century the Swedish orthodox Lutheran Church followed the lead of the Crown in attempting to weed out communal marriage customs and to discipline the people.

⁴⁶ Björne, *Patrioter och institutionalister*, esp. 22–51; Jägerskiöld, *Studier rörande receptionen*, 32–37, 46–48.

⁴⁷ Jägerskiöld, *Studier rörande receptionen*, 30–31, 49–53; Anderson, *Lineages of the Absolutist State*, 25–28.

CHAPTER ONE

THE PROCESS: TRADITIONAL MARRIAGE FORMATION IN MEDIEVAL SWEDEN

1.1 *The Swedish Process of Marriage Formation in Secular Custom and Law*

Medieval Swedish marriage was a process consisting of several stages in which the status of the principal parties as well as the duties and rights relating to marriage changed gradually. At the beginning there were two single unattached persons with no spousal rights or duties towards each other. At the other end these two persons emerged as a fully recognized conjugal couple with complete spousal rights and responsibilities. As early as 1555, Olaus Magnus Gothus observed that, especially among the Swedish peasantry, multiple and distinct ceremonies were customary.¹ Although almost similar marriage customs were observed also elsewhere, in Sweden the process of customary marriage formation was explicitly set forth in secular law.

It has been emphasized that the religious marriage ceremonies were not only legal and sacramental and that the popular marriage rituals were not solely magical and social. In reality, the Church had integrated many popular rituals into the ecclesiastical rites, e.g. exorcism and benediction of the nuptial bed. The popular rituals in turn also addressed legal concerns by legitimating the union in public transfer rites including processions and the participation of numerous witnesses, as well as in symbolical gestures that were illustrative of indissolubility, such as a kiss or a handclasp. Many customs related to symbolic expressions of the emotional and affectionate substance of marriage had a legal origin and function.² Indeed, in Sweden the legal function of many of the marriage rites dominated until the Church finally

¹ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 103.

² Westermarck, *The History*, II, 438–441; Burguière, “Le rituel du mariage,” 638; Treggiari, *Roman Marriage*, 149–152. See also Klapisch-Zuber, *Women, Family and Ritual*, 183–184.

managed to reduce these to a merely decorative and customary role, lacking any deeper function.

The customary process of marriage formation was codified in the provincial laws in the late thirteenth and early fourteenth centuries.³ The *communis opinio* of scholars is that these laws represent a period of transition during which the Catholic Church tried to introduce its own rules, if not to replace then at least to supplement the older domestic norms.⁴ We do not know how marriage formation looked before this period. Some scholars have assumed that the making of the marriage contract itself and its enforcement, the wedding, took place on the same occasion.⁵ Judging from the results of anthropological research, however, one might just as well presume the contrary; namely, that marriage took place in stages even in pre-Christian Sweden. This assumption has served as a point of departure in this study. In some sense of course, the medieval provincial laws present an ideal model of marriage formation, but because of a lack of evidence we are unable to assess if and how this model corresponded to contemporary practice. Judging by the later medieval and sixteenth-century material, however, the actual practice was still relatively close enough to the model described in the medieval laws.

This study argues that marriage formation, as described in the Swedish medieval laws, corresponds largely with the practice of the people.⁶ However, one should not assume that this took place because people obeyed the law. The binding force and nature of medieval laws should not be interpreted anachronically in a legal positivistic sense. Rather, it was the other way around: medieval Swedes acted in the customary way that had been written down as the law. The medieval laws preserved the prevailing marriage notions almost into the modern era, because

³ The first Swedish laws, the provincial laws, were written down about 1280–1350. This ‘codification’ was part of the larger European trend of committing (oral) legal customs down to writing. The Swedish provincial laws are a mixture of older, possibly originally orally transmitted laws, and newer layers of norms. They also reflected to some extent the balance of power of each province. As their name suggests, the provincial laws were applied only to the province in question, while originally the statutes had the nature of privileges that regulated issues between two contracting parties, mainly the king and the new knightly class. E.g. Norseng, “Law Codes,” 164–165; Bjarne Larsson, *Stadgelagstiftning*, 22–26; Letto-Vanamo, *Käräjyhteisön oikeus*, 14.

⁴ E.g. Hemmer, *Suomen oikeushistorian oppikirja* II, 7; Carlsson, *Jag giver dig min dotter*, I, 48; Knuutila, *Avioliitto*, 39–40; Pykkänen, “Avioliiton historiaa,” 81–82.

⁵ Hemmer, *Suomen oikeushistorian oppikirja* II, 5.

⁶ See also Salonen, “When Matrimony Turned into a Funeral.”

the law still remained basically in touch with societal values and existing practice in a society which retained its premodern institutions up until the eighteenth century and beyond.

The main features of the marriage process in the provincial laws were incorporated in the King Magnus Eriksson's (r. 1319–1364) Law of the Realm (ca. 1347) and Town Law.⁷ The Law of the Realm was updated in 1442⁸ by King Christopher of Bavaria (r. 1440–1448), but this so-called King Christopher's Law of the Realm (KrL) did not entail many changes concerning matrimony. It has been calculated that 97.2 per cent of the chapter on marriage in the 1442 law was taken verbatim from the previous law. In comparison to all other chapters of the 1442 law, the chapter on marriage was the most stable, as in the other chapters the unaltered law text ranged from 96 to 46.3 percent.⁹ Because no major legal reforms were made prior to the adoption of the Code of 1734 (an early seventeenth-century project miscarried), Swedish matrimonial law remained firmly embedded in its medieval outlines until the eighteenth century.¹⁰

As observed above, the Church left its imprint on the medieval secular marriage norms in the chapters on marriage and inheritance. The chapters on the church, moreover, presented the notion of ecclesiastical marriage formation, namely solemnization of matrimony *in facie ecclesiae*. The secular norms and the ecclesiastical norms were presented both as options on the one hand and as supplementary on the other hand. Yet the duality of the secular and ecclesiastical making of marriage in medieval Swedish legislation emphasized the legal significance of the secular marriage process. Seen from the point of view of defining the property consequences of marriage as well as spousal duties and rights, the ecclesiastical wedding ceremony was almost like the icing

⁷ The royal peace legislation was integrated into the provincial laws and in the mid-fourteenth century into the royal laws of King Magnus Eriksson (r. 1319–1364). It is generally assumed that the Law of the Realm was issued around March 1347. Its twin, King Magnus Eriksson's Town Law (MESL), originally written for Stockholm but later also adopted by the other Swedish towns, followed soon (1347–1360), Hafström, "När tillkom," 538. See also 8.3.1347, DS V, doc. 4148, 643–644; Inger, *Das kirchliche Visitationsinstitut*, 201–203.

⁸ This law, which did not replace King Magnus's law until the early seventeenth century, was in force until 1736, when the 1734 Code of the Swedish Realm (SRL) was confirmed by the king.

⁹ Translator's introduction, *KrL*, 19–21. Cf. Gaunt, *Familjeliv*, 226.

¹⁰ One should note, however, that the Church Ordinance of 1571 and the Church Law of 1686 did contain matrimonial norms.

on the cake: it was a voluntary ceremony conferring no extra rights on the marriage couple.

In Swedish medieval laws betrothal (*fästning*) and the giving away of the bride (wedding, *brudlöp* or *bröllop*) constituted an essential double act characteristic of other medieval Scandinavian marriage laws. Even those scholars who have denied that betrothal in any way created a matrimonial bond have assumed that the betrothal gave the groom rights *vis-à-vis* third parties. Betrothal has been called the true, primary and most independent legal act in making a marriage, while the less independent and secondary wedding was an executive act.¹¹ Although betrothal and wedding were lifted above the other legal acts in older research, prior to the 1960s, later research has preferred to speak of three fundamental legal acts of marriage formation: betrothal, wedding and bedding.¹² These were the major events in the Swedish marriage process, which included the proposal and the giving of the morning gift. In this sense Swedish law was not unique, as for example Icelandic marriage law also insisted on several elements for a valid marriage: a betrothal at which the groom paid a certain minimum bride price (*mundr*) and a wedding at which the couple was publicly put to bed together.¹³

Stages of the Swedish Marriage Process

In comparison with other Scandinavian laws the Swedish law linked the marriage process to the reciprocal duties and (property) rights of the parties that were created along the way between betrothal and the couple's first night together.¹⁴ A multi-stage marriage process also seems to have been customary in the Germanic laws of Central and Southern Europe.¹⁵

As will be argued below, the completion of the Swedish marriage process was expected to take some weeks or months at the very least, but in some cases the process could even take many years. All these

¹¹ Lehmann, *Verlobung*, 4, 106–117, 123–124; Pylkkänen, “Avioliiton historiaa,” 82.

¹² For representatives of the older notion emphasizing betrothal and wedding, see Lehmann, *Verlobung*, 4, 106–117, 123–124; Hemmer, *Suomen oikeushistorian oppikirja* II, 7. For the newer, see Söderlind, “Book review,” 178; Carlsson, *Jag giver dig min dotter*, I.

¹³ E.g. Hastrup, *Culture and History*, 90, 93–95.

¹⁴ See also Lehmann, *Verlobung*, 80–81, 83–84.

¹⁵ Reynolds, *Marriage*, 75–77, 80–84.

stages and their legal significance will be presented in more detail below.

1.2 *Betrothal and the Consent of the Marriage Guardian*

The Legal Guardianship of Women in Medieval Sweden

All unmarried and married women in medieval and early modern Sweden were under guardianship, (*målsmanskap*, later also *förmynderskap*) as were boys under fifteen, all girls and the insane. Men reached majority at fifteen under normal circumstances, and at this age their fathers or guardians often gave them their share of the inheritance and they became able to represent themselves. Single women were not released from guardianship at a certain age, but remained minors forever. After reaching majority young men could still live at their father's home in an undivided estate, but in such cases they were under the authority of the father as the head of the household, although they were supposed to be compensated for their work.¹⁶ The head of the household, the master, was responsible for the acts of the members of his household, whether adults or children, free, servants or slaves, male or female. The standing of the individual in general, whether male or female, was weak in early medieval Swedish society, as the rights and duties of persons were defined through their position in the household or kin group.

Women were usually under two types of guardianship: a woman had a legal guardian (*malsman*, literally a man who had the right to speak for another) and a marriage guardian (*giptoman*, *giftoman*, literally: giving man). Normally the two were intertwined so that the same person acted in both capacities. The unmarried woman was legally represented and her property managed by her legal guardian, her closest male relative, usually father or brother. While guardianship normally always went to the next kinsman in line, according to town law, the parents could appoint a new guardian for their daughter before their death.¹⁷ The legal guardian conducted all litigation for his ward, answered for her offences in court and managed her property.

¹⁶ E.g. ÖgL, B 12, 207–208; DL, R 17, 106; GL, 20, 219. MEL, Kg 20, 12; KgL, Kg 21, 36. See also SkL, Om arv, 46, 12; Letto-Vanamo, *Käräjäyhiteisön oikeus*, 118.

¹⁷ MESL, G 1, 38; SL 1387, G 1, 15. In towns relatives could be scarce and respectable friends or neighbours were more likely to be available for the management of the ward's affairs.

Originally their legal guardians, not the women themselves, were considered personally responsible for their own actions. Yet, the provincial laws demonstrate an evolution from a more collective society to a growing individual responsibility for one's own actions. For example, according to the law of East Gothia, if a woman murdered her unbaptized child or was convicted of larceny, her legal guardian paid her fine from her property as far as it sufficed, paying the rest from his own funds. He could be declared an outlaw in her stead, as women or minors could not be outlawed. If a woman and a man committed a homicide together, only the man was to be charged for the deed.¹⁸ He was also responsible for the payment of fines and damages she might have to pay. Nevertheless, a royal fourteenth-century statute decreed that all women were responsible for their own deeds.¹⁹

Formerly the legal guardian also sued or answered on behalf of his ward in court, because women and minors could not swear oaths, the principal means of proof, in secular courts. Moreover, at least theoretically an unmarried woman could be heard as a witness in court only if her guardian was also present.²⁰ Only if the woman was vagrant and her marriage guardian was not present in the province or *lagman's* district (*lagsaga*), could she be taken to court and possibly even convicted without her legal representative. Foreign women with no relatives in the region had to have a legal guardian appointed for them if they were to be sued.²¹ Certain laws allotted the legal guardian some compensation for his trouble: half of the fine for an offence committed against the woman went to the woman, half went to her marriage guardian, who pleaded on her behalf.²² Guardianship was an unpaid position of trust, related to a sense of reciprocity as were the duties and privileges related to kinship.

The marriage guardian, who was generally the women's closest male relative, had the right to arrange her marriage and manage her property

¹⁸ ÖgL, Kg 26, 17–18, D 8, 59, V 15, 35, 80, 91; VmL, R 22, 174; VgL I, Om mandröp 5:2, 25; VgL II, Dräparebalken 11, 257, T 33, 311; Letto-Vanamo, *Käräjäh-teisön oikeus*, 65, 82–83.

¹⁹ E.g. 28.1.1335, *DS* IV, 408; *MEL*, R 20:2, 166; *KrL*, R 17:2, 116. See also *MEL*, E 32, 195; *KrL*, E 36, 129.

²⁰ UL, R 11, 204; ÖgL, V 15–15:2, 22, 80, 84, R 12, 182. For similarities and dissimilarities in the *Sachsenspiegel*, see *The Saxon Mirror* I:45–47, 81–82.

²¹ ÖgL, R 12:2, 182, cf. V 37, 92.

²² ÖgL, V 14:1, 80.

or affairs. Kinship involved inheritance rights, but the other side of the coin was the duty to maintain one's parents or relatives if they were unable to take care of themselves owing to illness or old age.²³ The woman's marriage guardian, whose position will be examined below in more detail, betrothed her to the groom and gave her away at the wedding. The relationship between the legal or marriage guardian and his ward was reciprocal and it combined privileges with responsibilities: to speak and to answer for a woman, to look after her best interests and exercise his power over her. Usually the marriage guardian was also his ward's closest heir and she was his.²⁴ This was both the strength and weakness of the system, as will be discussed below in Chapter 3.2.

The position of *giftoman* was more than a position of trust. It entailed power and privileges: if the marriage guardian's rights were encroached upon by another person's betrothing or wedding a woman without the consent of the true marriage guardian, he was to receive a forty-mark fine for the offence.²⁵ Nevertheless, the marriage guardian might betroth the same woman to several men, which was dishonest and would cause problems. Thus, the laws prescribed a fine of forty marks for such an act.²⁶ The marriage process probably brought more expenses than income to the marriage guardian, because organizing the wedding feast was an expensive matter. Yet, in return, arranging a wedding involved a display of power and possession. Marriage in general brought social prestige. It permitted the marriage couple to create and restructure social networks, but it also enabled the marriage guardian to represent the family and emphasize its honour, wealth and social status.²⁷

Legal guardianship was transferred from the *giftoman* to the husband in the course of the wedding process, but even after a woman's marriage, her marriage guardian could play a certain role in her life. Some provincial laws placed him in a position to sue her husband in the event that he seriously injured her. The *giftoman* added the fine for the

²³ E.g. Hastrup, *Culture and History*, 85–89; SkL, Om arv, 41–44, 11–12, Om dråp och sår, 85, 92, 56, 58; SdmL, J 17, 93–94; HL, J 15, 361; DL, G 16:1, 83; VmL, J 17, 112–113; UL, J 21, 142–143; MESL, J 15, 76. See also Ägren, “Individualism.”

²⁴ E.g. ÖgL, D 9, 59; MEL, G 5:1, 20, 41, 46.

²⁵ E.g. ÖgL, V 14:1, 80; MEL, G 2:1, 39; KrL G 2:1, 43. The fine was to be divided between the hundred, the injured party and the king. In the fourteenth century one mark equalled 8 öres = 24 örtugs = 192 pennings. In 1360, the yearly wages of a labourer were three marks plus food and lodging, Lagerqvist – Nathorst-Böös, *Vad kostade det?*, 44.

²⁶ MEL, G 2:2, 38; KrL G 2:2, 43.

²⁷ Pylkkänen, *Puoli vuodetta*, 84; Pylkkänen, “Avioliiton historiaa,” 82.

offence to her dowry, which theoretically remained separate from her husband's property.²⁸ In some laws the widow was required to consult her marriage guardian if she wished to cede her land.²⁹

After the couple had spent the wedding night together, the husband started to manage his wife's dotal property for her. He had virtually complete power to administer it as he saw fit during the marriage, though with certain limitations especially concerning inherited land, which enjoyed special protection in the interest of the larger kin group. Neither the husband nor the wife could lawfully sell inherited land unless they had first offered it to their relatives. If the husband conveyed his wife's lands, whether by sale, gift or barter, he needed her consent to the transaction. Moreover, if for example, he exchanged her lands for others, the new lands had to be equal or better in value.³⁰ Otherwise, his heir had to compensate her for the misadministration of her property, or the sale could be annulled retrospectively. The husband or the wife could sell each other's inherited land in order to redeem the other from captivity or because of hunger or poverty, provided that this was not caused by squandering or gambling. The husband could also be obliged to sell his own lands before touching his wife's. In all other cases, the consent of the wife and her closest relatives was required.³¹

It was precisely the property aspect that provoked secular society to exercise some influence over the affairs and decisions of widows, who were normally free from guardianship and could administer their property for themselves. In some laws widows had marriage guardians whose consent was necessary for alienating land. Some widows even had legal guardians who could represent them in court.³² When the nobleman Holmsten Jonsson was named widow Valborg Nilsdotter's legal guardian (*maalsman*), she seems personally to have requested him to act as her guardian at the assizes. Probably she already needed someone capable to look after her interests for she appears to have

²⁸ E.g. ÖgL, V 10, 78.

²⁹ ÖgL, G 10: 4, 107.

³⁰ SdmL, J 8, 88; ÖgL, G 14, 106; MEL, G 20, 45; KtL, G 19, 49. See also JfL 1.35, 30–31.

³¹ MESL, J 16–16:1, 76; SL 1387, J 16, 37; MEL, J 32, 81–82; KtL, J 17, 66. See also SdmL, J 8, 88; ÖgL, J 14, 106–107; UL, J 4:6, 133; VgL II, J 6–7, 332; DL, B 7, 49; VmL J 13, 109; Carlsson, *Jag giver dig min dotter*, I, 76–77.

³² VmL, R 23, 174; ÖgL, G 14:4, 104. For foreign examples of widows' guardians, see, e.g. *The Saxon Mirror* I: 23, 77; SkL, Om arv, 1–2, 3 and Additamenta V. 2., 150 and XIII, 159.

been involved in a property dispute, as the following year a certain Knut Nilsson was sentenced for robbing her of her property. He had forcefully removed from Holmsten Jonsson's estate property belonging to Valborg Nilsdotter that she had deposited with her lawful guardian for safe-keeping.³³

Occasionally, widows or wives complained of their husbands' misadministration of their property or of the deliberate abuse of their power. Helga Anundsdotter empowered her brother-in-law to appeal to the law to get back her manor, which her former husband Joar Köningsmark had alienated. He had not had any lawful and compelling reason for the alienation, such as poverty or imprisonment. Moreover, he had used physical violence to force her to relinquish her seal, which had then been used.³⁴ The competence of married women to engage in lesser minor transactions, such as to buy and sell food and chattels, without the knowledge of her husband was limited to property worth one *öre* at the most, depending on the law.³⁵ Nevertheless, as has been pointed out, the legal transactions made by the wife or the husband that exceeded the authority conveyed by law were not automatically null and void, but only voidable if contested in court.³⁶

In practice, the customs regarding legal representation in court and the completion of other legal transactions varied from one region to another. Even if a woman's own responsibility for crimes she had committed was extended in the course of the Middle Ages, so that she had to answer personally for the crimes she had committed, the responsibility of her legal guardian was still considerable.³⁷ In practice, the participation of women in the lower courts as plaintiffs, defendants or witnesses in early seventeenth-century Sweden varied considerably from one region to another and was greater in towns than in the countryside. However, it was rare for women, widows excepted, to

³³ 16.1.1410, *SD* II, 246; 20.1.1410, *ibid.*, doc. 1241, 247; 6.7.1411, *ibid.*, doc. 1451, 408.

³⁴ 13.2.1397, *SRAP*, II, doc. 2848, 316.

³⁵ *SdmL*, Km 4, 151, Tj 12:4, 207; *DL*, B 32, 56; *VmL*, Km, 5, 120, Tj. 30:4, 85; *HL*, Km 2, 367; *UL*, Km 4, 151; *ÖgL*, Km 8:1, 167. *MEL*, Km 3:1, 153, *KrL*, Km 4, 104; *Saköresbok för Medelpad 1541–1609*, 155.

³⁶ Pykkänen, *Puoli vuodetta*, 90–91. See also Dübeck, "Kvindernes retstilling," 102–103. See also Hansen, *Ordnade hushåll*, 185–186.

³⁷ E.g. Ivar Fleming's *maakirja*, 94–95.

act independently in cases involving land.³⁸ For example, in sixteenth-century western Finland women were more active in managing their own property, personally suing and defending themselves in court, and they were usually mentioned by name in court records. In Karelia, by contrast, women were usually represented by men and allotted a more passive role. Even their identity was usually established only through their relationship to a man, and they often remained nameless in the court records. Only Karelian men paid fines for sexual crimes, while Karelian women appear more commonly as victims of physical assault than perpetrators. This difference is at least partly explained by the difference in the structure of society: in sixteenth-century Satakunta, the position of the nuclear family was replacing that of the kin, while this development was considerably slower in Karelia.³⁹

In later seventeenth-century Finland it was rare for an unmarried woman to be represented by her guardian in criminal cases and in most civil cases, especially after she had left home. Married women appeared personally in court when accused of a crime and in many civil cases, except if the case was related to their inheritance, when they were usually represented by their husbands. When a married woman was the victim of a crime, her husband often represented her. In late seventeenth-century rural Finnish practice, the exclusivity of the husband's guardianship over his wife's property was less marked than the law prescribed. Loyalty to the interests of the household was necessary, but the powers of the wife to manage her own property, especially movable property, and to make legal transactions were much more flexible in practice. They depended on a customary division of labour between the master and mistress of the household.⁴⁰

The Definition and Duties of the Marriage Guardian

Traditionally in Swedish marriage formation the role of the woman's marriage guardian was very important. Among many peoples, even those that permit young people to court each other to some extent, parental support for the prospective partner has usually still been required for marriage. Above all, first marriages have often been organized by

³⁸ Lahtinen, "So the respectable widow," 109–111; Lahtinen, "Veljet ja sisaret," 121–123; Taussi Sjöberg, *Rätten*, 99–116.

³⁹ Mäkelä, *Suvusta perheeseen*, 88–103, 110–115, 164–167; Suvanto, *Tksilö*, 212–214, 424–427.

⁴⁰ Pylkkänen, *Puoli vuodetta*, 127–139, 271–288.

family elders, heads of the family or legal guardians. The necessity of parental consent is a feature shared in many societies, including the early Roman, Jewish and Near Eastern cultures, although this did not necessarily mean that young people were forced to marry against their wishes or that their consent was not taken heed of. Generally, from an anthropological point of view, the more economically developed the culture, the less freedom of choice has been awarded the children, especially women: marriage by 'purchase' or 'bride price' and distinctions of wealth have influenced the development.⁴¹

In early medieval Germanic law the guardian's power over women was called *mund*, the relic of which was the *mundium* of the Florentine *mundualdus*. In certain Swedish laws *mund*, originally meaning bride price (e.g. expression *mäp mund ok mäp male*), had come to signify that the marriage had been correctly performed: that the father had given away his daughter according to the lawful formalities.⁴² The consent of the marriage guardian, expressed through his active participation in the betrothal ceremony and the wedding, was one of the necessary factors distinguishing between marriage and concubinage. If no betrothal, by which the bride was legitimately given away by her legal guardian, had been performed, the children born of the union were considered illegitimate, while the woman's status was not that of a wife but of a concubine.⁴³

The position of marriage guardian involving power and privilege, it was imperative to know who the rightful guardian was, particularly if the father, guardian *par excellence*, had died. To regulate the matter, the laws contain lists in order of preference, in which the closeness of the degree of kinship was the decisive factor. Paternal and maternal kin were treated fairly equally: only if there were persons from both sides who were equally close was the paternal kinsman given preference.⁴⁴ In practice the social status of the contesting parties who were equally

⁴¹ Quale, *A History of Marriage Systems*, 71; Westermarck, *The History*, II, 278–353, esp. 310–315, 406.

⁴² Esmyol, *Geliebte oder Ehefrau*, 70–73, 106–107; Leisching, "Eheschliessungen," 25, 34; VgL I, Å 7, 76, n. 20, 85–86; VgL II, Å 10, 271.

⁴³ Sjöholm, *Sveriges medeltidslagar*, 118; Hastrup, *Culture and History*, 90, 93. See also Ross, "Concubinage," 6.

⁴⁴ SdmL, G 1, 64; HL, Å 1, 302; ÖgL, G 9, 104; UL, Å 1, 63; DL, G 3, 78; VmL, Å 1, 43; VgL II, Add. 8, 383. See also *JL* 1.28, 26–27, 1.33, 30–31. Cf. Hastrup, *Culture and History*, 93–94; *Landrecht des Königs Magnus Hakonarson*, V. Erfdatal 1.1, 2.1, 146–151.

List of relatives to be considered as the women's marriage
guardian (MEL, G 1):

1. father
2. son (omitted in KrL, G 1:1)
3. brother
4. paternal half-brother
5. maternal half-brother
6. father's father
7. mother's father
8. father's brother
9. mother's brother
10. the closest kinsman on either side, but if two were equally close, the paternal kinsman was preferred

close kin might be given the decisive role.⁴⁵ The list of the 1442 law was almost identical, but the omission of the son as guardian may refer to the notion that widows, not their kinsmen, were supposed to give themselves away in marriage.⁴⁶ The law of East Gothia presupposed that the closest kinsman marry off the woman only if the marriage guardian was abroad, while the law of Jutland gave a kinless woman the right to choose one of her friends to give her away.⁴⁷

According to some provincial laws, the *giftoman* could be a woman, such as the mother or married sister, although most laws left this duty exclusively in male hands.⁴⁸ Later, the royal laws, displaying patriarchal tendencies, insisted that marriage guardianship be strictly in male hands. Only the bride's mother was to be consulted if she was still alive.⁴⁹ Her opinion was of an advisory nature as her consent was subordinate to that of her husband as *giftoman*. The story of the life of (Saint) Birgitta Birgersdotter (1303–1373), who came to be known as both as an outspoken and strong-willed woman, is quite telling in this regard. In this tale, Birgitta's daughter had been betrothed to a great villain, who had caused much damage in the realm. Birgitta was opposed to the match for this reason, but not only her husband, but also the king

⁴⁵ RA, Sturearkivet, 19.10.1517, nr. 1359.

⁴⁶ KrL, G 1:1, 43; Lehmann, *Verlobung*, 22–25.

⁴⁷ ÖgL, G 9, 104; *JL*, 1.33, 30–31. See also Jochens, *Women*, 25–26.

⁴⁸ VmL, Å 1, 43; HL, Å 1, 302; UL, Å 1, 63. For Icelandic law, see *Isländisches Recht: Die Graugans*, IX:144, 259; Jochens, *Women*, 25.

⁴⁹ MEL, G 1, 39; KrL, G 1:1, 43. For Icelandic and Norwegian law, see Lehmann, *Verlobung*, 24; *Landrecht des Königs Magnus Hakonarson*, V. Erfðatal 1.1, 2.1, 146–151. See also Lahtinen, *Sopeutuwat*, 46–47, 90–92.

and all his council willed the union. Because of this conflict, Birgitta, pregnant with her daughter Cecilia, often had bouts of bitter tears, but her opposition did not prevent the planned wedding.⁵⁰ It ought to be noted that in this ecclesiastical account, no reference was made to the consent of the betrothed maid herself. Possibly it was considered irrelevant.

The reasons for the disappearance of women as marriage guardians have been debated. It may have been a consequence of the rule that married women were always to be represented by their husbands, which has been attributed to ecclesiastical influence.⁵¹ However, one could just as well argue for the contrary: that the disappearance of female marriage guardians was a result of secular patriarchal tendencies. The sources do not determine the matter either way.

Town law was more inclined to protect the rights of the conjugal couple at the expense of the larger kin group. In addition, it showed a more neutral attitude towards male and female relatives. According to town law, a suitor was to approach the girl's marriage guardians, i.e. her closest kinsmen, especially her father and mother. If they were deceased, the closest heir or the legal guardian (*forman*), appointed by the parents on their deathbed, replaced them.⁵² But what if the maiden was parentless or her nearest kinsman lived so far away that assistance was impossible? The Swedish medieval laws were silent on this question: they seem to presuppose a more archaic and stable society in which the presence of the legal guardian was a prerequisite for betrothal. It looks as if the practice in Stockholm was that non-kin acted *in loco parentis*. In his commentary on the town law, Olaus Petri (1493–1552) explained that if a maidservant's marriage guardian lived 'further than forty or a hundred miles' from the town, her master looked after her interests betrothing her with the consent of the mayor and the town council.⁵³ Masters were generally expected to take responsibility for the members

⁵⁰ *Vadstenadiariet* 12.3.1399, 68–71. For a discussion on maternal influence over children, see Hacke, *Women, Sex and Marriage*, 99–104.

⁵¹ Lehmann, *Verlobung*, 26; Carlsson, *Jag giver dig min dotter*, I, 58; Söderlind, "Book review," 179.

⁵² *MESL*, G 1 and 15, 38 and 45; *SL 1387*, G 1 and 15, 15 and 21. Unlike the Law of the Realm, which gave a son double what the daughter received, the town law awarded daughters and sons equal shares of inheritance and showed no preference to the paternal kin, e.g. *MESL*, Å 1–2, 56; *SL 1387*, Å 1–2, 24. In towns the widow was entitled to half of the communal property, in contrast to the third allotted in the countryside, *MESL*, G 9 and 12, 42–44; *SL 1387*, G 9 and 12, 19–20.

⁵³ Olaus Petri, "Kommentar till Stadslagen," G 2, 322.

of the household, including servants and apprentices. Moreover, in marriage matters they also stood *in loco parentis* for their staff, negotiating dowries, arranging matches, giving advice and consent and presiding over betrothals or present-tense marriage contracts.⁵⁴

Kin-control was probably less pronounced for orphans, especially if poverty or lack of land had forced the girls to migrate, for example, to town and take service. This also tended to lift the age of marriage as the girls would have to scrape together a dowry. The marriages of migrant servants would thus be more individualistic than the unions of locals with family networks, connections and property, whose marriages were more often arranged and who tended to marry at an earlier age.⁵⁵

King Magnus Eriksson's Law of the Realm insisted that if the legal guardian was feeble-minded, decrepit, crippled or there was a conflict of interests between the guardian and the ward, the matter was to be taken to court. In such a case, the guardian was to be chosen from among the closest relatives.⁵⁶ Presumably the same principles applied to the marriage guardianship. Yet, on occasion it could be less than clear who had the right to act as marriage guardians. The priest Törne Hansson (Stiernskiöld) had been negotiating a marriage for his fatherless niece with the *sven* Bengt Persson under the auspices of Protector Sven (Svantesson) Sture the younger (*ca.* 1492–1520). In the summer of 1517, the plans were progressing smoothly to the satisfaction of both Törne and Sture, who planned to send the maid to a noble lady's household in order to learn the duties of married women. By October, however, these marriage negotiations had come to nothing, as Törne had received a letter from the maiden's closest maternal kinsmen, the noblemen Axel and Ture Posse, who considered themselves the girl's guardians (*maalsmän*) also in matters regarding her marriage.⁵⁷ In fact, Axel Nilsson Posse (d. 1551) was a member of the royal council, like his father before him, and his late sister Gertrud Nilsdotter Posse seems to have been of more distinguished lineage than her deceased husband Göran Hansson (Stiernskiöld).⁵⁸

⁵⁴ McSheffrey, "I will never," 156, 158–160, 163–164, 166, 168; Goldberg, "Masters and Men," 56–62; Ingram, *Church Courts*, 200; Donahue, *Law, Marriage, and Society*, 198. See also Hansen, *Ordnade hushåll*, 176.

⁵⁵ Elliott, "Single women," 86, 90–95, 97–99.

⁵⁶ *MEL*, G 22, 46.

⁵⁷ RA, Sturearkivet, numbers 1355 and 1359, 5.6.1517 and 19.10.1517.

⁵⁸ Elgenstierna, *Den Introducerade adelns VI*, 2–3; Elgenstierna, *Den Introducerade adelns VII*, 668.

The Posse family denied their ‘consent and goodwill’ to the match they considered to be beneath their niece. Rather, they claimed to want to advance her by marriage, not degrade her as this proposed match would, believing she could find another suitor whose family and lands would be worthier of her. Moreover, as her inherited maternal lands were situated in Norway, they preferred a suitor who lived nearer that part of the county. Not wishing to deny the guardianship of these aristocratic maternal kinsmen, Törne Hansson retreated, begging Sture not to be offended or to start to dislike him despite the wrecked marriage plans. He assured the protector that his deceased brother would not have wished to act contrary to the wishes of his brothers-in-law.⁵⁹

In everyday life, at least the upper classes consulted a large group of relatives, sponsors and friends prior to a proposed marriage in order to assure that the alliance was acceptable to most, if not all. This added legitimation to the father’s or guardian’s decision. When Stig Hansson justified his refusal of his daughter’s hand to the suitor proposed by Svante (Nilsson) Sture (ca. 1460–1511/1512) in an evasive letter, he was careful to mention that he had consulted his ‘friends’ from both his daughter’s paternal and maternal side. They all agreed that she was too young and inexperienced for wifehood and running a household. She should therefore spend some time under her mother’s care until she learned these tasks so that the ‘good man with whom God joins her’ can rely on that. Stig Hansson also added that he could not give any other answer before a year had passed.⁶⁰ Similarly, when Henrik Brand, a member of the royal entourage, fell in love with a noble maiden, Gödik Fincke’s daughter, and she with him, he asked first the nobleman Axel Kurki (Kurck) to speak for him to Fincke. This task Kurki performed, but Fincke responded that he could only give an answer after he had discussed the matter with his brother-in-law, Jöran Boije, the maiden’s maternal uncle. Meanwhile, Brand asked the king’s chancellor, Nils Chesnecopherus, and the royal secretary Peder Nilsson to intercede for him with the king in the matter.⁶¹

⁵⁹ RA, Sturearkivet, number 1359, 19.10.1517.

⁶⁰ RA, Sturearkivet, 465, 15.8.15xx (the exact year is unknown). See also Brand, “‘Deserving’ and ‘Undeserving’ Wives,” 3; Phillips, *Medieval Maidens*, 32, 110–120.

⁶¹ 25.4.1605, *Samlingar af urkunder rörande Finlands historia*, II, 182–183. For the consulting of a larger kin group see also RA, Sturearkivet, 22.1.1517, 1279. For the Fincke family, see Ramsay, *Frälsesläkter*, 111.

According to many Swedish provincial laws, widows were exempted from guardianship, corresponding with the notions of canon law and the Bible.⁶² Other laws were less liberal. According to the law of Södermanland, for instance, a widow chose a husband with the counsel of her father and closest relatives, while the law of West Gothia even presupposed that a widow be betrothed and married off by her marriage guardian.⁶³ Some other Scandinavian laws also restricted a widow's right to choose her second husband freely by implying that she consulted her kin—or the laws applied only to widows with neither father nor legitimate son alive. Icelandic law, in contrast, freed widows who were more than sixteen years old from guardianship.⁶⁴ Magnus Eriksson's Law of the Realm indicated that a widow was no longer considered able to give herself in marriage, as her son was listed as one of her possible marriage guardians.⁶⁵ Moreover, the Swedish expression 'to be man-given' (*mangifftvin*), i.e. to be given away in marriage by her guardian, could be used of widows as well as maidens. Maidens were also called 'ungiven' (*möö och obegiuen*), meaning unmarried.⁶⁶ Secular society tended to consider that a widow had reverted to her father's authority, as head of the household, if she had returned to his house and ate his food.⁶⁷

The greater freedom of marriage of widows, accorded in the 1442 law, seems to conform better to the canon law of marriage.⁶⁸ The greater freedom of widows manifested itself in other ways, too. For example, the widows belonging to Stockholm's councillor elite felt themselves least bound by ethnic (German/Swedish) boundaries, although mixed marriages were not the norm in such circles. This liberty has been attributed to a greater freedom of choice, widows being less bound by male marriage policies than maidens.⁶⁹ Indeed, examples of such remarrying widows show that they took care of the marriage negotia-

⁶² E.g. UL, Ä 2, 64; C. 31 q. 2 dictum ante c. 1; 1 Cor. 7:39. See also Sheehan, *Marriage, Family and Law*, 84; Turlan, "Recherches," 501, n. 84; Ribordy, *Faire les noces*, 107–108.

⁶³ SdmL, G 1:1, 64; VgL II, Add. 8, 383; Pylkkänen, "Avioliiton historiaa," 82.

⁶⁴ *Landrecht des Königs Magnus Hakonarson*, V. Erfðatal 2.2, 150–151; SkL, Om arv, 46, 12; Hastrup, *Culture and History*, 93.

⁶⁵ MEL, G 1, 38.

⁶⁶ 17.2.1565, Konung Eriks XIV:s nämnds dombok, 177; *Iivar Flemingins maakirja*, 87; 12.3.1591, EST, 257. See also Jochens, "Consent," 151–152, 167.

⁶⁷ See also 15.2.1591 Daga, *Sörmländska härads domböcker*, 39.

⁶⁸ KtL, G 1:1, 43.

⁶⁹ Lamberg, *Dannemännen*, 95.

tions themselves. The preliminary negotiations between Josef Persson (Djula-ätten) (d. 1528), bailiff of the Castle of Turku, and the widow Estredh, for example, were handled by the parties themselves. Still, both wished to have the goodwill of the Protector Sten Sture, and in addition, the widow had asked for her friends' advice.⁷⁰

Practical considerations prompted widows to marry almost as eagerly as widowers. For peasant widowers, remaining unmarried could be burdensome if there were small children to look after and women's work in the household to be done. Occasionally, it was claimed that remarriage was necessary because poverty precluded the man from hiring a maid to do the work: one did not have to pay wages to a wife. For widows 'marriage was principally a means of organizing a life, managing a household and preserving one's status in the community'. Individual feelings were, therefore, often secondary, while practical reasons occupied the primary role. A widow's property provided an essential lure for suitors and it counterbalanced or even surpassed the less tempting aspects such as her age or the existence of children from the previous marriage.⁷¹ Especially rich and childless widows were immensely attractive baits.⁷²

Guardians, Abductions and Peace Legislation

Many Swedish medieval laws make a point of mentioning that a man was to ask for a wife, and not take her by force.⁷³ Societal peace could be severely disturbed by violent abductions, which is why they were included among the later thirteenth-century peace laws. The abduction of a woman and rape were considered breaches of the peace of women in the royal peace laws (*edsöre*). They were also considered offences against the victim's legal guardian.⁷⁴ If a man violently abducted a woman, he was outlawed, and he had first to settle with the injured party, the woman's guardian, if he wanted to be able to return. The injured party had to intercede with the king in order for the abductor

⁷⁰ RA, Sturearkivet, number 563.

⁷¹ Howell, *The Marriage Exchange*, 114–115.

⁷² E.g. RA, Afskrifter ur Vatikan-arkiver, Bullor 1390–1400, Bonifatius IX, 24.11.1398.

⁷³ E.g. UL, Ä 1, 63; HL G 1, 302; VmL, Ä 1, 43.

⁷⁴ Seducing a maiden dishonoured and insulted the head of the household partly because it diverted her loyalties from her kin, Bandlien, *Strategies of Passion*, 67–70, 72, 86–89, 256.

to be readmitted into the protection of the peace laws after paying a forty-mark fine.⁷⁵

The law of Hälsingland specified that if a person abducted the bride before the wedding, he had to pay a forty-mark fine, while the fine was double if the crime was committed during the wedding.⁷⁶ The provincial law of Gotland also considered marriage through abduction or violence, against the consent of kin, to be an offence for which the culprit had to pay with his life. Alternatively, if the woman's kin accepted compensation, the fine was that of homicide, three marks in gold.⁷⁷ According to Swedish law, a rapist did not have the option between marriage to his victim or a penalty.⁷⁸

The section in the peace laws concerning abductions, however, may have been inspired by contemporary events. There were at least two famous abductions of highborn maidens in the thirteenth century that, apart from leaving their imprint on annals, might have left their explicit mark in the law. Namely, in 1244 the noble *lagman* (*legifer*) Lars Petersson of East Gothia abducted (*rapuit*) Benedikta Sunesdotter from a nunnery and fled with her to Norway. Benedikta was of aristocratic lineage with royal connections and the abduction may have been politically inspired as a provocation to the king and his influential brother-in-law Birger Magnusson (ca. 1200–1266), the future Earl Birger.⁷⁹ Indeed, it is not known whether this abduction later led Earl Birger, to whom the royal peace legislation is attributed, to extend the royal protection to women, guaranteed by the king and the magnates.⁸⁰ Both abduction and rape were to be punishable with outlawry, confiscation of chattels and compensation to the injured party, while the king had to be placated with a forty-mark fine.⁸¹

So, by 1288, when Folke Algotsson, son of the *lagman* of East Gothia, abducted Ingrid, daughter of Svantepolk Knutsson, the king's powers to punish such deeds had increased. Here too, the abductor took the

⁷⁵ SdmL, Kg 6, 44; HL, Kg 3, 289; UL, E 6, 45; ÖgL, E 3, 35; VgL II, U 7, 247, Add. 5, 7:12, 376, 380. MEL, E 14, 191; KgL, E 12: 2, 123. MESL, E 11–11:2, 216; SL 1387, E 11, 89. Cf. SkL, Additamenta, I:1–2, 146. See also ÖgL, E 3, 35; DL, E 3, 22; VmL, Kg 3, 35.

⁷⁶ HL, Å 2:1, 303.

⁷⁷ GL, 21:2, 223.

⁷⁸ Cf. SkST, 50, 195; Ruggiero, *The Boundaries of Eros*, esp. ch. 5.

⁷⁹ Axelsson, "Folkvisorna," 226–228, 231, 235.

⁸⁰ For England, see Ives, "Agaynst taking awaye of Women," esp. 26–30; Post, "Sir Thomas West."

⁸¹ For Denmark, see *JL* 2.29, 70–71; Dübeck, "Kvindernes retstilling," 107.

maiden, the betrothed of the Danish magnate David Torstensson, to Norway in order to escape punishment. This breach of the peace legislation invoked outlawry and high fines of forty marks. While Folke Algotsson seems to have escaped royal wrath by remaining in Norway, his relatives were less lucky: one of Folke's brothers and his father were imprisoned for some time and another brother was decapitated.⁸²

This concern for peace was shared in other countries, too, as abductions caused feuds, violence, enmity and disorder. In Italy and England, where new and more severe laws on punishments were given to abductors and their accomplices during the course of the fourteenth and fifteenth centuries, the interests lay in discouraging unauthorized marriage and protecting the family fortune.⁸³ The emphasis on parental consent can clearly be seen in the late medieval French cases of *rapt*.⁸⁴ In this case it made no difference to the family fortune whether or not the woman was a willing party to an elopement or the resisting victim of a violent abduction. By contrast, the Church's insistence on the freedom of choice made this issue of paramount importance.

If betrothal did not take place, the woman's marriage guardian had not assented to the match and the required gifts to her kin had not been given. Thus the woman had neither been legitimately betrothed nor wedded. An expression of such logic is found in the Icelandic Egil's saga. In this saga a man who in vain had proposed to marry the maid Thora finally abducted her from her father's house. She gave birth to a daughter whose legitimacy and rights to inherit after her maternal grandfather were later disputed. Thora's father had been reconciled after the birth of the child to her abductor, and thus their union had been retroactively legitimized, but implicitly this meant that basically Thora was a concubine and her daughter a bastard until her father relented.⁸⁵ Because of the participation of the woman's marriage guardian, the betrothal was one of the necessary legal acts in a legitimate marriage according to the Icelandic law *Grágás*.⁸⁶

⁸² Axelsson, "Folkvisorna," 249–254.

⁸³ For England see Ives, "Agaynst taking awaye of Women," esp. 22–27, 31, 37; Post, "Sir Thomas West," esp. 26–30, and for Italy, see Dean, "Fathers and daughters," 91–92 and for Ghent, Nicholas, *The Domestic Life*, 53–54.

⁸⁴ Ribordy, "Mariage," 38–39, 44–45.

⁸⁵ Egillin, *Kalju-Grímrinþojan saaga*, 15–16, 24, 74–80, 135–138.

⁸⁶ *Isländisches Recht: Die Graugans*, VII:118, 206; Lehmann, *Verlobung*, 1–4; Hastrup, *Culture and History*, 90, 93.

As Freisen has put it, although the *causa efficiens* in the Germanic marriage was consummation, the transfer of the guardianship of the woman was the *conditio sine qua non* that consummation had that effect. This is behind the view of Hincmar of Reims on the elopement of the princess Judith with Count Balduin of Flanders: the latter could afterwards obtain the consent of her father, the Emperor Charles the Bald, in order to validate the union even in secular law.⁸⁷ While Roman law focused mainly on the public aspects of the crime of abduction (*raptus*) and punished all accomplices to the offence—whether abductor, woman or her parents—the emphasis of Germanic law lay on the offence against the guardian’s power (*mundium*). Consequently, when the crime was perceived to be against the woman’s guardian, after the deed the abductor could come to an arrangement with him and her family about the necessary financial transactions for the transfer of the *mundium*.⁸⁸

Originally in Swedish society, fornication (*lönskaläge*) was a crime punishable with a fine paid to the woman’s marriage guardian, who could initiate the case against the seducer.⁸⁹ This has been explained by emphasizing the privilege of the freeman, awarded by the law, to arrange the marriage of his daughter or kinswoman. The marriage guardian’s position of power would be undermined by a man secretly visiting the woman and fornicating with her. In addition, her loyalty to her kin could be thwarted by an outsider who did not respect them enough to act openly or publicly present himself as her suitor.⁹⁰ Probably the woman’s marriage guardian could give her as a concubine to a man if this served the interests of the kin group. In Iceland this was customary, but this might also have taken place elsewhere in Scandinavia.⁹¹ Thus, a distinction was made between a woman who was clandestinely pursuing a love-affair to please solely herself and a woman given as a nobleman’s

⁸⁷ Esmyol, *Geliebte oder Ehefrau*, 217–218; Freisen, *Geschichte*, 116, 141; Reynolds, *Marriage*, 394–399. See also Reynolds (*Marriage*, 101–108) for abductions and elopements in the Germanic laws.

⁸⁸ Reynolds, *Marriage*, 101–102, 106. See also Freisen, *Geschichte*, 594.

⁸⁹ SdmL, Å 3:1, 74; HL, Å 14, 308; ÖgL, V 14:1, 80, Å 16:1, 131; VgL I, G 6:1, 98; VgL II, Å 18, 287, Add. 12, 12:2, 391–392. See also SkL, Om hor och lägersmål, 219, 224, 125–126; *JL*, 2.18, 62–63; Jacobsen, “Sexual Irregularities,” 74–75; Jochens, “The Church,” 380–381; Jochens, *Women*, 32; Ruggiero, *The Boundaries of Eros*, 18–22. Cf. UL, Å 22:1, 74; VmL, Å 17:1, 53: the mother received the fine, probably as child support.

⁹⁰ Bandlien, “The Church’s Teaching,” 63–64.

⁹¹ Magnúsdóttir, *Frillor och fruor*. See also Nors, “Illegitimate,” 21–22, 30–31.

or chieftain's concubine by her marriage guardian or kin to further their interests. Consequently, only the law of West Gothia penalized a man for having sex with his betrothed bride before the wedding, unless she was a widow. The six-mark fine went to her father.⁹²

Betrothal as the Paramount Legal Act in the Swedish Marriage Process

Any man who wanted to marry was, according to the laws, to go to the woman's *giftoman* and nearest kin and ask for her in marriage. The woman was not a subject performing a legal act but rather the object of the marriage ceremonies.⁹³ In fact, she did not even have to be present at her betrothal.⁹⁴

Sixteenth-century sources reveal that the good offices of the *taleman* or *böneman* (lit. talking or asking man) was important in presenting the suit. The use of an intermediary to present the suit to the bride and her family was an ingrained local custom even if the outcome was clear from the start, as in cases where the couple had been intended for each other since childhood. Yet, as a result, on some rare occasions the suitor saw the woman at the trothplighting ceremony for the first time. This could cause trouble.⁹⁵ But the go-between did more than just deliver the message with the groom: in a ritualistic way he also dwelled on the virtues, merits and wealth of the suitor.⁹⁶ Although there is hardly any evidence of the custom from the Middle Ages, because this informal stage was unregulated by the Swedish laws, the practice was probably ancient and customary. We may assume that even medieval Swedish suitors were often accompanied by respected local persons acting as *talemän*.⁹⁷ Actually, the ritualized position of go-betweens has been called an 'institutional feature of arranged marriages in classical peasant societies'.⁹⁸

⁹² VgI I, G 6-6:1, 98; VgI II, G 8, 284, Add. 12:2, 392.

⁹³ DL, G 1, 78; UL, Å 1, 63; HL, Å 1, 302; SdmL, G 1, 64; DL, G 1, 78; VmL, Å 1, 43; ÖgL, G 9, 104; VgI I, G 2, 96; VgI II, G 2, 282. MEL, G 1, 38; KgL, G 1, 43. See also JfL, 1.33, 30-31; Belmont, "La fonction symbolique," 651; Frensdorff, "Verlöbniß," 313-315.

⁹⁴ See also Jochens, *Women*, 27.

⁹⁵ Thunander, *Förhjuden kärlek*, 96; Söderlind, "Book review," 179.

⁹⁶ Heikinmäki, *Suomalaiset häätavat*, 65-77; Kaivola, *Kahden kauppa*, 10. See also Kjellman, *Bröllopsgåvan*, 102-104.

⁹⁷ Carlsson, *Jag giver dig min dotter*, I, 51-53, 80, 88-89; Salonen, "When Matrimony Turned into a Funeral"; Söderlind, "Book review," 178. See also Jochens, *Women*, 25.

⁹⁸ O'Hara, "Ruled by my friends," 14.

The custom of using go-betweens in presenting the man's suit and gifts to the woman's family has been practiced among other societies in Europe. Princes used prestigious embassies presided over by bishops or high aristocrats accompanied by nobility and knights, which also underlined the wealth, prestige and honour of the suitor.⁹⁹ The good offices of a go-between, a venerable cleric, were also customary in *Quattrocento* Rome in order to set the initial negotiations among the wealthy into motion. In Sweden these negotiators could be the suitor's relatives, which was probably the most common practice. This transmitted the additional signal that the family of the suitor approved of the union. Occasionally persons of particular respectability or even higher social standing, such as priests, could be used. If the suitor was unknown in the region, a priest acting as an intermediary gave credibility to the respectability of the suitor's person and intentions.¹⁰⁰ In various parts of Italy, there were even professional go-betweens (*sensale*) to make the preliminary inquiries. Even in early modern England, money could be got out of marriage broking in the form of brokerage fees.¹⁰¹

Although intermediaries were not prescribed by secular law, it does not follow that they were devoid of legal meaning. The *talemän* were often older and socially more distinguished than the suitor. They added to the publicity of the suit, which was acknowledged by the parties themselves. Their testimonies of the betrothal proceedings could later be heard at an ecclesiastical court: whether the bride's consent had been given voluntarily, whether the guardian had been present, whether the decision to marry had been given due consideration, or whether some time for consideration had been agreed upon.¹⁰² For similar reasons the negotiator could also be heard in the secular courts.¹⁰³ Because of the respectability conveyed by the use of a negotiator, his presence could specifically be requested by the girl or her parents. The omission of a negotiator in the preliminaries could be regarded as a valid reason

⁹⁹ Gennep, *The Rites of Passage*, 122; Klapisch-Zuber, *Women, Family and Ritual*, 183; O'Hara, "Ruled by my friends," 14–15; Ribordy, "The Two Paths," 325; Ribordy, *Faire les noces*, 2–9; Segalen, *Love and Power*, 22. See also O'Hara, *Courtship and constraint*, 114–118.

¹⁰⁰ Hall, *The Arnolfini Betrothal*, 53; Kjellström, "Saamelaisten kosinta," 151; *CEAP*, 423; Söderlind, "Book review," 179.

¹⁰¹ Kuehn, "Contracting Marriage," 396; Weinstein, *Marriage Rituals*, 92–104; O'Hara, *Courtship and constraint*, 100–101.

¹⁰² E.g. ULA, UDP, 8.5.1594, 19; Söderlind, "Book review," 179. See also Carlsson, *Jag giver dig min dotter*, I, 51–53, 80.

¹⁰³ Thunander, *Förhjuden kärlek*, 96. See also Lennartsson, *I säng och säte*, 134–136.

for cancelling one's promise of marriage.¹⁰⁴ Even ecclesiastical courts had a positive attitude towards this practice. In several marriage cases from the 1590s, the making of the suit (*bönemål*) was mentioned as one of the indications that the trothplight had been legally and correctly performed.¹⁰⁵

Using negotiators to present the suit was probably customary among all estates and throughout medieval and sixteenth-century Sweden. It was also an established custom in Denmark, Norway, Estonia, Lapland and Russia. In Lapland, the suitor waited outside the house or hut while his suit was presented by the negotiator inside. Especially among the peasantry the custom survived in some Swedish regions, for example, Skåne until the mid-nineteenth century and in more peripheral Finnish regions until the early twentieth century.¹⁰⁶ After the suit had been presented and accepted, the Swedish marriage process moved to the formal stage of betrothal.

The original Swedish expression for betrothal was *fästa*, which can also be found in Icelandic, Norwegian and Swedish legal texts.¹⁰⁷ The Old Swedish verb *fästa*, to betroth, meant to confirm, witness, decide and conclude. It could also have the sense of proving something with witnesses or one's own seal, or of offering to confirm with one's oath, while the noun *fästa* signified confirmation of sale, division, gift or mortgaging of land through certain prescribed formalities. The witnesses of such formal legal acts were called *fastar*. The giving of a pledge from the groom to the bride's family in the form of property once formed the core of Swedish marriages. Similarly, the Finnish words for betrothing and betrothal, *kihlata* and *kihlajaiset*, originates from the word *kihla*

¹⁰⁴ Söderlind, "Svenska," 5; Söderlind, "Book review," 179. See also Ribordy, "The Two Paths," 325–327.

¹⁰⁵ E.g. ULA, UDP, 8.5.1595, 19; ULA, UDP, 15.9.1596, 125v; ULA, UDP, 8.9.1598, 145; ULA, UDP, 15.9.1598, 145v; Kasterlösa sochen, *VAA*, 29. See also Lenartsson, *I säng och säte*, 133.

¹⁰⁶ Kjellström, "Saamelaisten kosinta," 152; Kaivola, *Kahden kauppa*, 9–10, 82. For Estonian customs see Tedre, "Eestiläiset häät," 79–80 and for Russian customs, see Cistov, "Pohjoisvenäläiset häät", Pohjoisvenäläiset häät," 115 and Lapp customs, Kjellström, "Saamelaisten kosinta," 151–152; Kaivola, *Kahden kauppa*, 135–136. See also 30, *CEAP*, 312; Parvio, *Isaacus Rothovius*, 333; Melander, *Drag ur Åbo hovrätts äldre historia*, 216; Thunander, *Förhjuden kärlek*, 96; Lindstedt Cronberg, *Synd och skam*, 193; Heikinmäki, *Suomalaiset häätävät*, 88–91. See also Troels-Lund, *Dagligt liv*, III:IX, 71–73.

¹⁰⁷ Hastrup, *Culture and History*, 90, 93; Lehmann, *Verlobung*, 4. See also Lehmann, *Verlobung*, 9–11, 78–79; Friedberg, *Das Recht der Eheschliessung*, 18–19.

(deriving from the Old German *gisla*), a borrowing meaning hostage, pledge or surety.¹⁰⁸

In archaic law, witnessed solemnities and rituals formed the essence of the legal act, and mere informal consent was in clear conflict with popular principles of decorum and publicity. Indeed, publicity is the aspect commonly distinguishing between a valid and recognized marriage and an illicit union, and the ensuring of the union's publicity has been characterized as the most general social objective of marriage rites.¹⁰⁹ Even in the Continental Germanic law codes the betrothal was a very formal legal act in comparison with the more informal Roman engagement. Indeed, it has been inferred that on the Continent the Germanic betrothal 'recommended itself to Christian bishops and reformers as something that they could adopt and Christianize'.¹¹⁰ At this stage, the Church had not yet opened the door to informal exchanges of consent.

In a largely oral legal culture, like that of medieval Sweden, the performing of the prescribed rituals and their actual witnessing was important. Moreover, the formalities of the betrothal had considerable similarities with the rituals of sale of land or compensation after homicide.¹¹¹ A further indication of this is the role of handclasping, a widespread symbol of contract or agreement, by which the betrothal was to be ratified according to the law of West Gothia. Provided that the betrothal had been performed by the lawful marriage guardian and had been accompanied by the friend gift, it was completely binding.¹¹²

Although the woman's marriage guardian was the main actor in a betrothal, secular society insisted upon the participation of kinsmen as well. The law of Hälsingland presupposed that four witnesses from both sides assist at the ceremony.¹¹³ According to both the medieval Laws of the Realm, the woman's marriage guardian was to be present at the betrothal feast (*fästninga stämpna*) as well as four witnesses:

¹⁰⁸ Söderwall, *Ordbok*, I, 244, 372–375; Sarmela, "Suomalaiset häät," 12, 34; Knuutila, *Avioliitto*, 31.

¹⁰⁹ Westermarck, *The History*, II, 433–438; Stock, *The Implications of Literacy*, 51.

¹¹⁰ Reynolds, *Marriage*, 117. See also *ibid.* 171.

¹¹¹ Hafström, "Från fästning med fastar," 168–170. See also Jochens, *Women*, 27.

¹¹² VgL I, G 2, 97; VgL II, G 2, 282; SdmL, G 1, 64; VmL, Å 1:1, 43. For handclasping at Icelandic and Norwegian betrothals see also Borgarthingslov, II:3, *Bruchstücke der Rechtsbücher*, 52–53; Frank, "Marriage," 475; Jochens, "The Church," 380; Arnórsdóttir, "Two Models of Marriage?," 86.

¹¹³ HL, Kk 15:1, 269, Å 1, 302; UL, Å 1:1, 63.

two kinsmen from her side and two from his.¹¹⁴ The kinsmen acted as witnesses to the act itself, if any dispute ever arose as to whether it had taken place according to law. In addition, they could ensure that the union was accepted by the two kin groups. As the amount of the dowry was announced at the betrothal, these witnesses could also later give evidence on the amount and type of property promised with the woman.¹¹⁵ The amount and quality of the morning gift was also agreed at the betrothal.¹¹⁶ In many respects, a betrothal did not alter the woman's status: her legal guardian answered for her crimes, paid her fines, and represented her interests if a third person had offended her.¹¹⁷ After the formalities were over, those present drank together.¹¹⁸

The involvement of the more distant kinsmen in marriage negotiations was necessary because of the reciprocal duties of kinsmen. These involved inheritance rights, legal guardianship of maidens and minors, and blood vengeance, which by the later Middle Ages had been replaced by participation in paying and receiving collective fines for crimes and homicide. The role of the kin group diminished in judicial matters during the Middle Ages through the joint influence of the Catholic Church and the Swedish kings. Originally, the involvement of the kinsmen in the marriage negotiations may have signified some sort of collective responsibility for the matrimonial alliance and the new in-law. The law of Dalarna, namely, explained that if the woman's kinsmen were not consulted about her marriage to a foreigner (a man from outside the region), the *giftoman* alone had to answer for his deeds with his property. Conversely, if a foreigner married a girl without her father's consent, he alone was responsible for all of his own actions.¹¹⁹ In the course of the Middle Ages the number of kin involved in the marriage process was also reduced to witnesses and onlookers rather than active consenters, while the role of the parents and the legal guardian was emphasized.¹²⁰ Paradoxically enough, the town laws were keen on

¹¹⁴ MEL, G 2, 39; KrL, G 2, 43. See also VmL, G 1, 43.

¹¹⁵ SdmL, G 5, 66; HL, Å 1:1, 302; UL, Å 18, 73; ÖgL, G 1, 4, 5:1, 11, 101–102, 105, Å 8, 127; VgL I, G 2, 96; VgL II, G 2, 282. MEL, G 14, 44; KrL, G 14, 48. See also Borgarthingslov, II:9, *Bruchstücke der Rechtsbücher*, 56–57; Hastrup, *Culture and History*, 93; Frank, "Marriage," 475; Jochens, "The Church," 380.

¹¹⁶ VgL II, G 2, 282.

¹¹⁷ The law of East Gothia stated this expressly, ÖgL, V 36, 91–92.

¹¹⁸ E.g. ÖgL, G 9, 104.

¹¹⁹ DL, G 3:2, 79.

¹²⁰ See also Lehmann, *Verlobung*, 28–31.

having an even larger audience at the betrothal. While the older version of the town law in the law book of Söderköping speaks of eight witnesses, four of which were to be relatives of the bride and four of the groom, the later version in the law book of Stockholm prefers a whole dozen, six from each side.¹²¹

Priests could be present at the betrothal, but according to the law they did not perform the act of betrothal. On occasions when the priest was present, he probably acted as a solemnity witness, as did other noble or respected members of the society.¹²² This seems also to have been the role allotted to the priest by the Danish town law of Scania, which insisted that a priest had to be present at the betrothal along with other good men and women. These people, including the priest, could later testify about the betrothal if a dispute occurred. Certain evidence of Norwegian betrothals also show that even if a priest was present at the betrothal and was later heard as a witness about it, a layman could perform the actual betrothal.¹²³

Several aspects of secular law indicate the bindingness of betrothals. Firstly, secular law considered all children born to the betrothed couple to be legitimate, as if they had been born after the wedding.¹²⁴ For example, when Kerstin and Karin claimed their paternal and maternal inheritance at the assizes of Mora, it was noted and proved by witnesses that they were 'betrothal children' (*fästebarn*). As such, they were able to inherit.¹²⁵ Whether this norm is the product of reception of the canonical doctrine of presumed marriage (*matrimonium presumptum*) (discussed further below in Chapter 3.3) or an expression of older tradition cannot be established with certainty for lack of proof.¹²⁶ Yet the tenet of presumed marriage seems to have been a compromise between the consent theory (see Chapter 2.2) and the secular perceptions of the role of consummation as an essential condition for the creation of a permanent bond.¹²⁷ Therefore, this norm may have had its roots in popular perceptions in Sweden as well.

¹²¹ *SL 1387*, G 2, 15; *MESL*, G 2, 38.

¹²² Salonen, "When Matrimony Turned into a Funeral".

¹²³ *SkST*, 27, 92; Carlsson, *Jag giver dig min dotter*, II, 96.

¹²⁴ *ÖgL*, G 5:1, 102; *UL*, Å 18, 73; *MEL*, G 2:4, 39; *KiL*, G 2:3, 44; *MESL*, G 2:3, 38; *SL 1387*, G 2, 15. See also *SkL*, Om arv, 60, 15.

¹²⁵ *ULA*, Dalarnas dombok, 13.4.1549, 141v.

¹²⁶ For example Lehmann (*Verlobung*, 98–105) suggests that the norm is of canonical origin.

¹²⁷ See, e.g. X 4.4.5.

Secondly, if the marriage guardian of the woman refused to set the date of the wedding, the groom was permitted to abduct her by force, as such refusal was considered a breach of the agreement and an offence to the groom's kin. Unlike some Norwegian laws supposing that the wedding was organized within the following twelve months,¹²⁸ most Swedish laws left the length of the interval between betrothal and wedding to the discretion of the parties. If the marriage guardian refused to arrange the wedding despite the groom's request, he had to pay a three-mark fine. After the third refusal in more than two years, the groom and his kin had the right to abduct her forcibly and she became his legitimate wife. In this case, 'the woman is to be considered lawfully taken [i.e. betrothed and wed by her kin], not taken by abduction'.¹²⁹ In the later medieval laws, representatives of the central power had to be present. The groom had to announce his intentions to have the wedding arranged six weeks in advance. If the guardian refused without an acceptable reason (the bride's illness, theft, a fire in which the wedding clothes were burned, or discovery of an impediment to marriage) he was pay a forty-mark fine and, in addition, compensate the groom for his costs.¹³⁰ If the guardian still refused, the groom could take the matter to court.¹³¹ Then he could assemble his kin in order to take the bride by force. As the marriage guardian had given the woman away in the betrothal ceremony in the presence of the kin, the contract was binding and the abduction of the bride was nothing but enforcing it. However, in order to help to maintain societal peace and bolster their legal powers, it was in the kings' interests to subject this forcible execution to the control of the royal courts, so that it bore the stamp of royal jurisdiction and law enforcement. The judge, as the king's representative in an executive function, was to appoint four men who were to accompany him and act as witnesses. This duty could only be avoided only by paying a fine.¹³²

¹²⁸ Riisøy, *Stat og kirke*, 22.

¹²⁹ UL, Å 2, 64; VmL, Å 2, 44; SdmL, G 2, 64–65. See also HL, Å 2, 303; Carlsson, *Jag giver dig min dotter*, I, 91.

¹³⁰ ÖgL, G 8, 103–104; VgL I, G 9:3–5, 99; VgL II, G 16, 286. MEL, G 4, 40; KtL, G 4, 44–45; MESL, G 4, 39–40; SL 1387, G 4, 16–17. See also the Norwegian Gulathingslov, Lehmann, *Verlobung*, 50–51; Holtan, *Ekteskap*, 12–13.

¹³¹ Such complaints could also surface in ecclesiastical courts, e.g. VaLA, LDP, A I a:1, 21.12.1608, 36.

¹³² MEL, G 4, 40; KtL, G 4:1, 45. See also MESL, G 4, 39–40; SL 1387, G 4, 16–17; ÖgL, G 8, 103–104.

The participation of the royal judge was probably intended to oversee and regulate the groom's forcible abduction of his betrothed. Under such circumstances, if the court had authorized the use of force, the groom and his accomplices escaped the usual penalties for breaching the especially protected peace of the home. Therefore, no fines were paid for breaking and entering, homicide or wounding the party resisting the taking of the bride. However, if any of the groom's party was wounded or killed, the crime was punished with a double fine. In such a case, according to the law, the woman was to be called 'lawfully taken' (*laghtagin*) and not taken by force or abducted (*valdtaghin eller räünt*).¹³³ This paragraph, though surely only exceptionally applied in practice, was probably necessary in order to provide a way out of an impasse. In a case from 1546 Lasse Ångerman complained that Anders of Vågebäck did not wish to give his bride to him although they were lawfully betrothed (*laglegga giffuit*). Anders' counterclaim was that Lasse had had an affair with another woman after the betrothal. According to the jury, Lasse and his bride had not had intercourse, but as there was no lawful cause for refusing to hand her over, the court awarded her to Lasse.¹³⁴

Surely, the groom's lack of enthusiasm was more common, and this problem was more difficult to solve, because the laws presupposed his activity in setting the wedding date. There are sixteenth-century examples of how the groom's passivity might cause the wedding to be postponed for years on end although the bride's kin had asked the groom several times to arrange it.¹³⁵ The law was silent on the rights of the bride and her guardian in having the marriage finalized, as it defined the making of marriage as a process proceeding entirely according to the will of the groom.¹³⁶

Thirdly, after betrothal, both parties, but originally probably only the woman, were under an obligation of fidelity towards each other.¹³⁷ That sexual exclusivity began at betrothal is clear from the fact that sexual intercourse with a third party was a legitimate reason for terminating the betrothal. In this sense there was nothing liminal about the Swedish

¹³³ *MEL*, G 4, 40; *KrL*, G 4:1, 45; *MESL*, G 4:2, 40; *SL 1387*, G 4, 17.

¹³⁴ ULA, Dalarnas dombok, 9.3.1546, 43v.

¹³⁵ E.g. ULA, UDP, 23.9.1596, 127.

¹³⁶ See also Mäkelä, *Suvusta perheeseen*, 34.

¹³⁷ On the origins of the norm, see Lehmann, *Verlobung*, 102 and Köstler, "Ringwechsel," 7.

marriage process.¹³⁸ If a betrothed woman slept with someone other than her fiancé, she was treated as an adulteress in the secular courts and she was liable to all the punishments for the crime. In 1475 Peder Brandh accused his namesake Peder Olofsson of intercourse with his bride. Peder Olofsson admitted his offence and Peder Brandh, for his part, forswore his bride. As Peder was prepared to show clemency and did not insist on capital punishment, she was condemned as an adulteress as the law insisted: carrying the town's stones and banishment.¹³⁹

Fourthly, a further indication that the betrothed couple was already considered half-married was the status of injured party awarded to an abducted woman's fiancé. As mentioned above, rape and abduction of women were considered breaches of the peace of women, part of the king's peace legislation (*edsöre*). The abduction of an affianced bride was no exception of this rule, but while the injured party in the case of an unmarried woman was usually her father, here the injured party was her fiancé. In the law of West Gothia the marriage guardian and the groom were both injured parties if the betrothed bride was abducted.¹⁴⁰ Moreover, according to the royal laws, the bridegroom, as the injured party, received one third of the culprit's chattels, and the outlawed abductor was not readmitted into the protection of the royal peace unless the fiancé spoke in his behalf. Only if the groom was deceased did the bride's nearest kinsmen act as the aggrieved party. The fine was forty marks divisible into three according to the Laws of the Realm, but eighty marks according to town law, because of the more pronounced need for peace and control in towns, generally tending to make the punishments more severe.¹⁴¹ Abducting a man's betrothed before the wedding was rare, but in Karelia a man was sentenced in 1553 to pay a forty-mark fine for abducting another man's wife before the wedding.¹⁴²

¹³⁸ Cf. Gennepe, *The Rites of Passage*, 115.

¹³⁹ 20.11.1475, *AST II*, 59.

¹⁴⁰ VgL I, G 3, 96; VgL II, G 2, 282.

¹⁴¹ *MEL*, G 5:1 41; *KrL*, G 5:2, 45; *MESL*, G 5:1, 40; *SL 1387*, G 5, 17. For the Norwegian *Gulatingslov*, see Lehmann, *Verlobung*, 44.

¹⁴² Mäkelä, *Suvusta perheeseen*, 94.

1.3 *The Wedding and the Bedding: Enforcing the Contract*

The Wedding: Giving Away and Transferring the Bride

If betrothal signified a promise of a future marriage, the wedding was the execution of this promise.¹⁴³ Indeed, the transfer of the woman from one house to another has been called ‘the essential goal of marriage’, and publicity was of the essence in the legal acts related to the wedding.¹⁴⁴ The betrothal, already requiring many witnesses from both kin groups, signified the first step towards matrimony, but the wedding brought with it a change of status and accompanying rites of passage. Many groups in the larger community had an interest in the marriage and a role to play in the rites contributing to the formation of the new conjugal couple. The young people of the community, both families and kin groups, groups the engaged couples or their families belonged to (occupational associations, fraternities, or religious communities) and the local group, the village or quarter of the town.¹⁴⁵ The participation of the community in the creation of the new couple was not only desirable, but essential. This was typical of oral and traditional legal cultures where the collective memory of the community was an essential element of proof.¹⁴⁶

In medieval Sweden it was customary that women, friends and relatives of the bride, gathered at the bride’s home on the evening before the wedding. This feast was called *mökväll*, ‘maiden evening’. The matron of honour (*brupsäta*, *bruptughu mö* or *bruptugha*, *brufßramma*),¹⁴⁷ and other women gathered together in order to prepare for the wedding.¹⁴⁸ Olaus Magnus mentions in 1555 that in Sweden the ‘so-called wedding bath is generally the custom’. It was ‘performed with great solemnity always when a newly-wedded wife is to be handed over to the husband’. Honest matrons and maidens, arranged according to age, walked in a solemn procession before the bride to the sauna or bath house. Ahead of them,

¹⁴³ See also Sjöholm, *Sveriges medeltidslagar*, 116; Pylkkänen, “Avioliiton historiaa,” 82.

¹⁴⁴ Belmont, “La fonction symbolique,” 651.

¹⁴⁵ Gennep, *The Rites of Passage*, 118–119.

¹⁴⁶ See also Ribordy, *Faire les nocces*, 114–116; Hespanha, “Savants et rustiques,” 13–14.

¹⁴⁷ According to Cistov (“Pohjoisvenäläiset häät”, 118), the custom of using a bridesmaid may be very old, dating from the Early Middle Ages, because the Russian word, *brjúdga*, is of Scandinavian origin (*bruptugha*), and may date from the time when the vikings exerted influence over Kiev and Novgorod until the eleventh century.

¹⁴⁸ See also RA, Sturearkivet 25.11.1508, 1027; 18.8.1603, *SST från år 1592 V*, 100.



1. *De nuptiis plebeiorum* by Olaus Magnus Gothus. Roma, 1555. The public transfer of the bride to the house of the groom in a cavalcade or procession was an important part of the Swedish marriage rites. The arrival of the bride at the bridegroom's house had legal significance according to the Swedish medieval laws.

men carried big pots of good wine or ale that the women drank after eating toasted bread with sugar and cinnamon in order to regain their strength after the heat of the sauna. Olaus Magnus then records that the women left the sauna carrying garlands made of common rue. Then the maidens ate and slept together with the bride, as one who was consecrating her virginity to heaven.¹⁴⁹

The wedding took place the following morning starting at the marriage guardian's house, where the bride, normally his daughter, resided. Before the groom and his party arrived on the wedding morning, they had to send messengers to request for truce (*grïð*) in order to respect the peace of the home. The host guaranteed the peace and in return the groom's party had to hand in their weapons which were locked up until departure.¹⁵⁰ The ceremony was started by the guardian linking the hands of the bride and groom and citing the formula first mentioned in the law of Uppland, then in Magnus Eriksson's law of the Realm: 'I give you my daughter to honour and as wife, to half of the bed, to the locks and keys¹⁵¹ and to every third coin that you may own in chattels, and to all the right in the law of Uppland and that Saint Erik gave, in the name of the Father, the Son and the Holy Ghost'.¹⁵² These last words, reflecting Christianity, are assumed to be a later addition.¹⁵³ The *giptar mal* (*giftomål*), the name of the speech the woman's marriage guardian gave at the wedding, came to signify marriage and marrying in general.¹⁵⁴ This giving-away ceremony was probably also accompanied by ale drinking (*giftäröl*) at the guardian's house.¹⁵⁵

After this speech the cavalcade or procession from the bride's father's to her husband's house took place. This tradition was a public rite of passage, publicizing her transfer from her father's to her husband's power. The Swedish word wedding, *bröllop*, is derived from the word *bruplöp* signifying the transfer of the bride to the groom's home, the

¹⁴⁹ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 165; Heikinmäki, *Suomalaiset häätävät*, 238–241.

¹⁵⁰ Carlsson, *Jag giver dig min dotter*, I, 92–97; VgL I, G 9, 99; VgL II, G 16, 286; ÖgL, G 8:2, 104.

¹⁵¹ The keys were one of the most important symbols of a married woman's authority over the household, and taking away a matron's keys was a direct attack on her status, e.g. ÖgL, B 13, 208; Gaunt, *Familjeliv*, 45, 47–48, 117.

¹⁵² UL, Å 3, 65; HL, Å 3, 303; VmL, Å 3, 45. *MEL*, G 5, 41; *KrL*, G 5, 45. Cf. *MESL*, G 5, 40; *SL 1387*, G 5, 17.

¹⁵³ Almquist, *Svensk rätts historia*, 107.

¹⁵⁴ Söderwall, *Ordbok*, I, 400–401.

¹⁵⁵ VgL I, Om mandräp 13:1, 27; VgL II, Dråparebalken 27, 260.

most visible sign of the execution of the marriage contract.¹⁵⁶ The groom, his kinsmen and friends acted as her escorts. Some laws even specified the proper order of the main participants in the bridal procession from the bride's house onwards.¹⁵⁷ The public display of the dowry also served the need to prove its amount: the men transferring it could bear witness to the amount if a dispute arose.¹⁵⁸

The wedding procession was an important rite of passage and customary in many places all over the world, also in Europe. The bridal retinue marked the separation of the bride from her family, peer group and community. It also indicated the imminent consummation of the union. Often it involved a large group of people escorting the bride, carried or riding on an animal, to the groom's house.¹⁵⁹ Probably the dowry accompanied the bride to the groom's home. The transfer of the bride (*deductio*) was an important element in classical Roman weddings and, possibly as a continuum, part of especially upper-class marriages on the medieval Apennine peninsula. The tradition was performed with great finery and pomp either by directly escorting the bride to her husband's home or alternatively via the church, depending on the region. The custom was also known in Germany.¹⁶⁰ Certain twelfth-century glossators and canonists, inspired by Roman legal texts, considered the delivery of the bride to her husband's house and power to be the *sine qua non* of a valid marriage in addition to consent.¹⁶¹

In Sweden, the public transfer of the bride and the following feast were celebrated with pomp and circumstance, with a cavalcade of the expensively-clad bridal party, displaying the honour of the families. Magnus Eriksson's Law of the Realm issued limitations on the finery of the bridal procession, a showcase of the families' wealth and

¹⁵⁶ Söderwall, *Ordbok*, I, 150–151, see also *ibid.*, 810–811. Cf. Old English *bryd(h)lop*, lit. 'bride-running', Ross, "Concubinage," 20–21.

¹⁵⁷ DL, G 2, 78 and notes 3–6, 84–85, VmL, Ä 2, note 14, 44, 57. See also Heikinmäki, *Suomalaiset häätavat*, 327–329, 332–333, 460–461.

¹⁵⁸ SdmL, G 5:3, 67. See also Kjellman, *Bröllopsgåvan*, 99–101; Heikinmäki, *Suomalaiset häätavat*, 461–463; Klapisch-Zuber, *Women, Family and Ritual*, 219.

¹⁵⁹ Gennep, *The Rites of Passage*, 121–123, 125–127, 134–135; Sarmela, "Suomalaiset häät," 18–19; Ritzer, *Formen, Riten*, 17, 73–74; Levin, *Sex and Society*, 82; Klapisch-Zuber, *Women, Family and Ritual*, 219–221; Frances, "Making Marriages," 46.

¹⁶⁰ Klapisch-Zuber, *Women, Family and Ritual*, 186–190; Hall, *The Arnolfini Betrothal*, 53; Ruggiero, *The Boundaries of Eros*, 27; Ribordy, *Faire les nocces*, 123–125; Kuehn, "Contracting Marriage, 398–401."

¹⁶¹ Donahue, "The Case of the Man," 11–27; Brundage, *Law, Sex, and Christian Society*, 266–267. On the importance of the *deductio in domum mariti* in ancient Rome, see Treggiari, *Roman Marriage*, 166–167.

connections. It was customary that the groom provided his fiancée with necessary accoutrements (*forningæ*) for the occasion. According to the Law of the Realm, he was allowed to endow his bride with a horse with the necessary equipment, saddle and bridle, riding coat and hood. The town law threatened the groom with a forty-mark fine if he gave her for this occasion fineries worth more than six marks.¹⁶² The bride's closest relatives were forbidden to give her more than four sets of new clothes at her marriage, while they could give her other paraphernalia according to their wealth and wishes.¹⁶³ Only four persons of each kin group were allowed to wear wedding clothes specially made for the occasion, the groom being the ninth. Even guests were not allowed to have new clothes made for weddings more than twice a year on pain of a three-mark fine.¹⁶⁴ The law of Gotland limited the number of persons to two per carriage while disallowing all riding attendants.¹⁶⁵

The retinue was intended to attract maximal attention, while the onlookers could later testify to the fact of the marriage.¹⁶⁶ From seventeenth-century Swedish sources and those of other countries we know that the Church and authorities disapproved of the music, shooting and noise of the wedding procession. Making noise aimed to chase away evil spirits and to call attention and publicity to the transfer of the bride by attracting bystanders as witnesses.¹⁶⁷

During the procession the bridal party was especially protected: any act of violence towards its members was to be compensated by a double fine. The peace was also guaranteed by other means: people from the groom's house rode to meet the cavalcade to escort the bridal party to the wedding house, and they acted as guarantors of the bride's

¹⁶² Statute of Tälje, 17.7.1345, *DS V*, doc. 3972, 479; *MEL*, G 7, 41; *KrL*, G 7, 46; *MESL*, G 6:1, 40; *SL 1387*, G 6, 17.

¹⁶³ *MEL*, G 7, 41; *KrL*, G 7:1, 46. For sumptuary restrictions in the town law of Visby, see Hadorph, *Visby Stadz Lag*, 4.7–4.17, 73–76. See also e.g. Chojnacki, *Women and Men*.

¹⁶⁴ *MEL*, G 7:1, 42; *KrL*, G 7:2, 46; *MESL*, G 7:3, 41; *SL 1387*, G 7, 18.

¹⁶⁵ *GL*, 21:1, 223.

¹⁶⁶ Ruggiero, *The Boundaries of Eros*, 27; Roper, "Going to Church," 66; Frensdorff, "Verlöbniß," 8–9, 11, 15; Schwarz, *Die Bedeutung der Sippe*, 36–39. In some regions, town criers could herald a wedding as an important local news item, Origo, *The Merchant of Prato*, 60.

¹⁶⁷ Church Law of 1686, 15:25; 25, Synodal statutes of Växjö 1688, *ES I*, 88–89; Söderlind, "Svenska," 44; Heikinmäki, *Suomalaiset häätävät*, 456, 490–491. See also Westermarck, *The History*, II, 497–499; Belmont, "La fonction symbolique," 651–654; Klapisch-Zuber, *Women, Family and Ritual*, 262; Schwarz, *Die Bedeutung der Sippe*, 37–38; Roper, "Going to Church," 66.

safety until she was put to bed with her husband, who then resumed the responsibility.¹⁶⁸ For the bride this was thus a liminal period. Some laws maintained that if a crime was committed against her while on her way to the wedding, the fine was divided between the marriage guardian and the bridegroom. Other laws asserted that the killer of the bride during the wedding ceremonies had to pay an eighty-mark fine for her life and an additional compensation: forty marks for an unborn son and eighty for an unborn daughter. On the one hand, the law of East Gothia considered that abduction of the bride during the bridal procession was punishable with a forty-mark fine paid to the groom. On the other hand, the law of Uppland granted the bride's marriage guardian and kinsmen the right to press charges for any offence to the bridal party while on its way from her home to the wedding house.¹⁶⁹

The Wedding Feast: A Showcase of Family Wealth and Power

In Sweden as in most other countries, the wedding ceremonies were the most visible part of the marriage process. Both families were supposed to participate in the wedding costs.¹⁷⁰ In small agrarian communities the weddings were part of their so-called redistributive exchange, a ceremonial distribution of goods among the members of the community. Masters and patrons were expected to organize the wedding of their servants or protégés, who in turn submitted their choice for their friends' approval. The whole village participated and the guests were fed by the house organizing the wedding. Such large weddings have required the liquidation of months, perhaps even years, of saving, and on this account marriage could become an economic burden. However, all the guests and the community were required to participate in arranging and financing the collective occasion. The guests gave money, presents or food in order to meet the costs of the feast.¹⁷¹

The wedding gifts were also an important part of the exchange of property. According to Swedish medieval sumptuary legislation, each pair of guests could give no more than two *öres* in ready money as their

¹⁶⁸ HL, Ä 2:1, 303; DL, G 2, 78; VmL, Ä 2:1, 44–45; ÖgL, G 9:1, 104; UL, Ä 2:1, 64–65; SdmL, G 2:2, 3:1, 65. For Iceland, see Hastrup, *Culture and History*, 96.

¹⁶⁹ DL, G 2, 78; SdmL, G 3, 65; ÖgL, G 9:1, 104; UL, Ä 2:1, 64–65; VmL, Ä 2:1, 45.

¹⁷⁰ MEL, G 24, 47; KgL, G 27, 50.

¹⁷¹ Sarmela, "Suomalaiset häät," 15–16; Tedre, "Eestiläised häät," 81–82. See also Kjellman, *Bröllopsgåvan*, 63–65, 130–137.



2. *De ritu Christianorum conuiuiorum* by Olaus Magnus Gothus. Roma, 1555. In medieval and early modern Sweden, weddings were celebrated for many days with much eating and drinking, although efforts were made to limit the duration of the festivities, the number of wedding guests and the number of courses offered.

wedding present if they wanted to escape the three-mark fine. Nor was the bridal couple allowed to give any presents to anyone before, during or after the wedding.¹⁷² Olaus Magnus describes the rich gifts given to the couple, including horses and cows, goats and sheep, beds and textiles as well as all kinds of fruits of the ground, so that the couple's communal life would begin under lucky stars. According to Olaus, the newlyweds were also given a horse, an ox and an axe in a special ceremony, symbolizing that the couple had contracted a bond of trouble and dangers that necessitated them to be of one heart and one soul in all their undertakings until death parted them or the law annulled the union.¹⁷³

The presence of guests was important in the finalizing of the marriage and creation of the new conjugal unit. Naturally, as with the guests attending the betrothal, one of the functions of these wedding guests was also legal: to act as witnesses to the wedding and the accompanying judicial acts.¹⁷⁴ According to some provincial laws, the groom (and possibly the bride as well) had an obligation to invite all relatives within the third degree. Omission was punishable with a three-mark fine. In addition to the invited guests, party-crashers were a generally established and accepted feature of the collectivity of weddings.¹⁷⁵ Swedish medieval chronicles emphasize the costliness and grandeur of royal and noble weddings.¹⁷⁶

In late medieval society, however, feasts became the subject of sumptuary legislation that came to Scandinavia and the Baltic region via the Hanseatic League and German town laws. Weddings were natural targets of such legislation. While both the town laws of Visby and Stockholm contained sections regulating the sumptuousness of various feasts, the only provincial law including such restrictions was the law of Gotland, due to influence of Visby.¹⁷⁷ The wedding feast was permitted to last for two days only, and only the closest relatives could attend on

¹⁷² MESL, G 9–9:1, 42; SL 1387, G 9, 19.

¹⁷³ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 105.

¹⁷⁴ See also Davies, "The Status of Women," 108–109; Jenkins, "Property Interest," 72; McAll, "The Normal Paradigms," 10; Schwarz, *Die Bedeutung der Sippe*, 41; O'Hara, *Courtship and constraint*, 42–43.

¹⁷⁵ ÖgL, G 8:1, 104; Heikinmäki, *Suomalaiset häätavat*, 426–432.

¹⁷⁶ Eriks-krönikan, *Svenska medeltidens rim-krönikor* I, 15–16, 62–63, 67. See also Pedersen, "Did the Medieval Laity Know," 135; Donahue, *Law, Marriage, and Society*, 126; Holtan, *Ekteskap*, 15; Origo, *The Merchant of Prato*, 48.

¹⁷⁷ Carlsson, "Äktenskapsrätten," 169–181. See also *Landrecht des Königs Magnus Hakonarson*, V. Erfdotal 24, 194–195; Holtan, *Ekteskap*, 15.

the third day. In addition, the guests were forbidden to bring foodstuffs (*förningar*), while a toast to the Holy Virgin heralded the end to the drinking and feasting. Law-breakers were fined twelve marks.¹⁷⁸

Late medieval societies also tried to restrict the number of guest participating in weddings and other celebrations: child ale, churching ale, funeral ale, inheritance ale or the feast organized by a priest after he had celebrated his first mass.¹⁷⁹ The betrothal ale was a more modest occasion, whereas the wedding was a large-scale social event, regulated by sumptuary legislation.¹⁸⁰ Despite these restrictions, the Law of the Realm allowed a huge amount of high-ranking guests to attend the wedding: one bishop and the canons attending him, two other canons, eight knights, forty squires, twenty yeomen (*bonde*) and ten priests. The king's local official (*länsmän*) was to supervise that these numbers were not exceeded, and if more had been invited, the host had to pay a forty-mark fine. On the other hand, nobody was to come uninvited, and party-crashers were fined according to their status.¹⁸¹ Judging by the silence of the medieval town court records, these statutes may not have been strictly enforced. However, on one occasion Matts Bondesson was sentenced to pay a nine-mark fine for assault on Clemet at the wedding feast he had attended uninvited. For the party-crashing he had to pay an extra three-mark fine.¹⁸²

The town law did not divide the participants into quotas according to the guests' status, but set the maximum amount at thirty pairs of dinner guests, including both men and women. Twenty more couples could be invited at the permission of the bailiff, mayor and town councillors, making an absolute maximum of one hundred guests. However, members of the household staff, such as cooks, were not included in the number of guests.¹⁸³ After such feasts had been given, the host was supposed to swear at the town hall in the bailiff's, mayor's and the town councillors' presence, invoking God and all the saints,

¹⁷⁸ GL, 24, 225; Carlsson, *Jag giver dig min dotter*, I, 110–115. On the custom of bringing foodstuff to the wedding, Kjellman, *Bröllopsgåvan*, 71–74; Sarmela, “Suomalaiset häät,” 45; Tedre, “Eestiläiset häät,” 84; Perälä, *Ėskil Petraeus*, 271.

¹⁷⁹ MEL, G 8, 42; *KrL*, G 8, 47; MESL, G 7, 41; SL 1387, G 7, 18.

¹⁸⁰ MESL, G 7:1, 41; SL 1387, G 7, 18.

¹⁸¹ Statute of Tälje, 17.7.1345, DS V, doc. 3972, 479; MEL, G 8, 8:1, 8:5–8, 42–43; *KrL*, G 8, 8:1, 8:5–7, 46–47.

¹⁸² *Dombok för sydvestra Tavastland 1506–1510*, 284.

¹⁸³ MESL, G 7:2, 41; SL 1387, G 7, 18.

that he had obeyed the law.¹⁸⁴ Nevertheless, despite all the concern for the excessive pomp and luxury of weddings, there are no mentions of such oaths or convictions for disregarding the law in the existing medieval town court records of Arboga and Stockholm. Either the law was complied with or disregarded at least as far as weddings were concerned, as no trace of actual practice remains in the records. As the maximum amounts of morning gifts were completely disregarded, one may surmise that the same applied by and large to certain other sumptuary restrictions.¹⁸⁵

Such limitations were also commonplace in late medieval and early modern Italy and Germany. Italian towns started to legislate against luxury goods in the late thirteenth and early fourteenth centuries, usually punishing breaches of the regulations with fines or excommunication. In *Cinquecento* Venice, luxury at weddings was regulated on six different occasions between 1504 and 1562. These statutes contained prohibitions against 'throwing the dowry away in the kitchen' by curtailing the number of meals, variety of dishes and guests at the banquet and limited the value of gifts, clothes as well as the display of valuable movable goods.¹⁸⁶ Indeed, the wealth of many burghers clearly surpassed that of rural nobles, and they emulated and occasionally even exceeded the lavishness of the nobles in spending on weddings. This was precisely a reason for introducing sumptuary laws.¹⁸⁷ (The sumptuary legislation of the sixteenth and seventeenth centuries and its functions will be discussed in Chapter 4.5.)

Music was also part of the wedding feast. Musicians playing portable organs, violins, trumpets, pipes, lutes, harps and drums were hired for big feasts to play for a few *öre* each. Moreover, in Sweden in 1498 it was decided that whoever wished to hire the organ for a wedding had to pay six *öre*, of which part went to the church for the instrument

¹⁸⁴ *MESL*, G 7:6, 41; *SL 1387*, G 7, 18.

¹⁸⁵ But see 8.6.1476, *SSTI*, 59; Lamberg, "Säädylisyyden vartijat," 67–70. For Italy, see also Killerby, "Practical problems," 107–118.

¹⁸⁶ Chojnacki, *Women and Men*, 8–9, 50–51, 56–62, 69–72, 82–86, 132–136. For Italy, see Origo, *The Merchant of Prato*, 192–194, 271–272; Trexler, *Synodal Law*, 65, 69, 113–115, 271–271; Klapisch-Zuber, *Women, Family and Ritual*, 241–245; Killerby, "Practical problems," 101–105; Allerston, "Wedding finery," 26–31; for Germany, see Roper, "Going to Church," 74–79; Roper, *The Holy Household*, 151–155; Ozment, *Magdalena and Balthasar*, 71.

¹⁸⁷ Brady, *Communities, Politics, and Reformation*, 285. See also Chojnacki, *Women and Men*, 158–159.

and part to the musician.¹⁸⁸ The law disapproved of the custom that brides gave away their wedding clothes to wandering entertainers and musicians (*lekare*) possibly as their fee. If the bride wished to give away her clothes, she ought to donate them for pious uses to monasteries or churches.¹⁸⁹

In Sweden as in Stuart England, drink 'was built into the fabric of social life'.¹⁹⁰ In both Swedish and Finnish there is an expression 'to drink a wedding' in the sense of celebrating it. A Swedish provincial law observed that the wedding took place after the wedding ale had been brewed.¹⁹¹ The brewing took several weeks: if the ale was left to ferment in a cool room, the fermentation lasted for only one or two weeks.¹⁹² Swedish ale did not keep well, only some three weeks at best. The question of preservation was even more acute in the summer when suitable storage space was scarce. Even church courts understood the problems of preserving ready wedding-ale during the dog-days of summer if a proper cellar was not available.¹⁹³

The sharing of a festive meal is common trait of the wedding customs of many peoples. It is a collective rite of incorporation involving not only the couple but also their respective kin groups, families and communities.¹⁹⁴ Largely for this reason, late autumn was the favoured time for weddings in medieval Sweden. At this time the busy summer season of agricultural work was over, and the bins and granaries were full of foodstuff to feed the numerous wedding guests. This made it also a good time to establish a new household.¹⁹⁵ The wedding feast continued all night long even after the bedding of the bridal couple, and many of the guests stayed overnight. Indeed, their presence could again be required in the morning as witnesses to the confirmation of the morning gift.¹⁹⁶ The festivities lasted for several days. The guests

¹⁸⁸ Schück, *Stockholm*, 356, 358–363. See also Carlsson, *Jag giver dig min dotter*, I, 118–122.

¹⁸⁹ Statute of Tälje, 17.7.1345, *DS V*, doc. 3972, 479; *MEL*, G 7:1, 42; *KrL*, G 7:1, 46; Eriks-krönikan in *Svenska medeltids rim-krönikor* I, 62–63.

¹⁹⁰ Carlsson, *Jag giver dig min dotter*, I, 90; Lennartsson, *I säng och säte*, 113; Thomas, *Religion*, 21.

¹⁹¹ *DL*, G 2, 78.

¹⁹² Räsänen, *Ohrasta olutta*, 19.

¹⁹³ Räsänen, *Ohrasta olutta*, 98, 155; *CEAP*, 83.

¹⁹⁴ Gennep, *The Rites of Passage*, 120, 122, 126–128, 131–132, 138; Murphy, *Cultural and Social Anthropology*, 181.

¹⁹⁵ See Korpiola, "Tempus nuptiarum," 638–640; Gennep, *The Rites of Passage*, 139.

¹⁹⁶ 25.5.1596, Villåttinge, *Sörmländska härads domböcker*, 105; *DL*, G 6, 79.

were to be fed on at least two days: the wedding day itself and the following, second wedding day, and on each of these even the parish clerk (*klockare*) was to have two plates of food and one jug of ale as part of his salary.¹⁹⁷ The town law attempted to restrict the length of the festivities so that the wedding ale would last merely for two days, with only one meal served on each day.¹⁹⁸

Secular society considered both the betrothal and wedding as hallowed or especially protected occasions. If the bride or groom was killed during the ceremonies or the wedding procession, the culprit had to pay a much higher fine than usual. This sacred circle of peace extended even to the wedding guests, who were protected by higher than normal fines against assault or homicide. The law of Hälsingland especially protected the matron of honour.¹⁹⁹ In the provincial law of West Gothia the wedding and the giving-away ceremony in the bride's home were two of the three occasions when an equal fine had to be paid for slaves as for freemen.²⁰⁰ If the bride was killed in her husband's bed or the groom was killed, the crime was punished by an astronomical fine of over a hundred marks.²⁰¹

Judging from court records, this concern for the safety of the wedding couple was not surprising, as fights and homicides occasionally took place at such gatherings. The noble Margareta Grip considered it to be worth mentioning that not a single wedding guest had been killed at either of her weddings (1562 and 1571).²⁰² Even allowing for some exaggeration of the prevalence of casualties at weddings, they were by no means rare. In a case from 1618 a party-crasher killed the host of the wedding, Erik Andersson, who had arranged a wedding feast for his sister. Staffan the Shoemaker came uninvited and drunk to the party, provoking a fight because his shouting disturbed the wedding guests. Erik Andersson stood up and observed that Staffan had not been invited and that if he misbehaved, he should leave. At this, Staffan stabbed Erik in the arm with his knife so that the host bled to

¹⁹⁷ Statute for the parish clerk (*custos ecclesiae*), *FMU* IV, doc. 3632, 440; Sandholm, *Klockarämbetet*, 127, note 79, 186.

¹⁹⁸ *MESL*, G 7:2, 41; *SL 1387*, G 7, 18.

¹⁹⁹ *SdmL*, G 2:2, 65. See also *HL*, Ä 2:1, 303; *UL*, Ä 2:1, 65; *VmL*, Ä 2:1, 45.

²⁰⁰ *VgL I*, Om mandrâp 13:1, 27; *VgL II*, Dråparebalken 27, 260.

²⁰¹ *SdmL*, G 3:1, 65; *DL*, G 2, 78.

²⁰² Ödberg, "Om Hogenskild Bielkes moder," 14.

death.²⁰³ However, the casualties were usually guests stabbed by other guests drinking together at the same table.²⁰⁴ People customarily carried knives, but at times they deliberately took other weapons to the wedding. In one case three men had been drinking before they attended a wedding party to which one of them took an axe. When they continued to drink at the wedding, two of the party had words, but the homicide took place only after they had all left the wedding.²⁰⁵ Naturally minor incidents like fights and verbal insults also occurred.²⁰⁶

Intergenerational conflicts related to the opposition of heirs to their parents' remarriage might surface at the wedding. Such motives may have been bubbling under the surface when Lasse Brönielsson complained that his son-in-law (*mågh*) Erik Olofsson had hit him and insulted his new wife at his second wedding. At the wedding Erik had hit Lasse on the mouth so that he bled and when the bride's toast was about to be drunk Erik had claimed that they were about to toast to a whore.²⁰⁷ Thieves also took advantage of such occasions either by stealing items from the wedding house, robbing those attending the wedding, or profiting from the occasion as a diversion of the attention of the guests.²⁰⁸

The Bedding of the Bridal Couple: A Symbolic Public Ritual

In medieval Sweden, the bride was customarily 'led to bed' (*sengleda*) and that the marriage couple was publicly bedded together after the wedding banquet. Several provincial laws maintained that it was one of the essential legal acts linked to the creation of the new married couple.²⁰⁹

²⁰³ 2.11.1618, *SHD 1601–1651*, 43–44. See also RA, K. H. Karlssons avskrifter från Vatikan-arkivet, Suppliker 1441–1475, 25.2.1456; Salonen, "When Matrimony Turned into a Funeral."

²⁰⁴ E.g. 25.5.1596, *Villättinge, Sörmländska härads domböcker*, 105–106; 13.7.1604, *Östra härads dombok 1602–1605*, 87.

²⁰⁵ 11.8.1602, *Östra härads dombok 1602–1605*, 26. See also *SST IV*, 14.4.1505, 54–55; 8.7.1582, *VST*, 78.

²⁰⁶ E.g. *ÅSD 1624–1625*, 70. See also *SST IV*, 14.4.1505, 54.

²⁰⁷ 9.9.1608, *Uppländska domböcker 1608*, 30. See also 31.1.1597 and 7.2.1597, *SST från år 1592 II*, 101, 103.

²⁰⁸ E.g. 15.11.1475, *SST I*, 37; 27.10.1511, *SST IV*, 220; 11.11.1516, *SST V*, 129; 12.2.1605, *VST*, 369; 18.8.1603, *SST från år 1592 V*, 100; 9.4.1608, *SST från år 1592 VI*, 308; 3.4.1637, *ÅSD 1637*, 62–63.

²⁰⁹ E.g. *SdmL*, G 3:1, 65. The law of East Gothia (*ÖgL*, G 7, 103) is most specific in insisting that the couple go to bed *ippinbarlika*, i.e. publicly, in front of witnesses, under everyone's eyes (*opinbarlika*), *Söderwall, Ordbok*, II.1, 166–167.

However, it seems that the role of the bedding diminished in the later royal laws. Apart from the laws themselves, there are some medieval references to the custom in other sources, at least in Stockholm.²¹⁰ In the seventeenth century, the custom was still prevalent and mentioned in ecclesiastical sources, and indeed, in some regions it was preserved as a feature of peasant weddings until the nineteenth century.²¹¹

The leading of the bride to the bed took place in a festive procession, led by the most distinguished wedding guest. In a Stockholm wedding between two wealthy burghers around 1416, the mayor led the bride into the marriage bed, and when King Gustav Vasa arranged the wedding of his trusted servant and a noble lady in 1528, he himself led the bride to bed.²¹² In Sweden, the nuptial chamber was lit up by torches and candles, originally perhaps a means to keep evil spirits away. Possibly even dances with torches were performed at weddings.²¹³ When the nuptial couple had been put into bed, the couple was offered some dishes they, sitting on the bed, and those standing next to them quickly ate. The guests then left them.²¹⁴ As the bed played a key role in the Swedish nuptials, special wedding beds could be used for the occasion, adorned with expensive bedclothes made of finest imported cloth: the sheets and pillowcases were occasionally of silk, and the cloth of the blanket made in Brunswick. Such fineries could be borrowed for the occasion from relatives, friends or neighbours.²¹⁵

Especially in towns, the bedding down of the couple had become quite symbolic. The bride and groom were put into bed together, while the bride's parents covered and uncovered them with a blanket. This probably followed a German practice according to which the public bedding was only an interlude in the wedding festivities after which the couple arose and the festivities continued until the couple retired to bed in earnest.²¹⁶ In Icelandic law, by contrast, the bedding, witnessed by at least six men, was one of the constituting elements of

²¹⁰ For Stockholm, see *SD III*, doc. 2661, 475 and 14.4.1505, *SST IV*, 54.

²¹¹ Om echenskap, art. 19, *Biskop J. Rudbeckius' kyrkio-stadgar*, 20; Carlsson, *Jag giver dig min dotter*, I, 187–190; Heikinmäki, *Suomalaiset häätavat*, 508–511, 518–520.

²¹² *SD III*, doc. 2661, 475; Carlsson, *Jag giver dig min dotter*, I, 170.

²¹³ Carlsson, *Jag giver dig min dotter*, I, 170–171, 175–177.

²¹⁴ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 105. See also Carlsson, *Jag giver dig min dotter*, I, 172–173.

²¹⁵ 30.4.1512, *SST IV*, 257. See also 29.5.1447, *FMU III*, doc. 2700, 412; 15.11.1475, *SST I*, 37; 16.4.1600, *SST från år 1592 III*, 36; 29.1.1588, *VST*, 132.

²¹⁶ Carlsson, *Jag giver dig min dotter*, I, 148–151, 172–174, 181–187; Schwarz, *Die Bedeutung der Sippe*, 42–43.

a valid marriage. The public bedding, or putting the bride and groom in bed together, was customary in many European regions, including England, France, Germany and Florence. This took place with the wedding guests as onlookers and participants amid much joking and singing, often with ribald or sexually explicit content.²¹⁷ As in Sweden, French *coutumiers* and German law regarded bedding to be related to the property consequences of marriage. These will be discussed in more detail below in Chapter 1.4.

Apart from the bedding of the couple, the wedding festivities included many references the consummation of the marriage: the use of red colour in wedding rites, throwing grain on the couple, drinking potions and so on as means of ensuring the fertility of the union. Not even the ecclesiastical rituals were innocent of such implications. For example, the use of cloth, *pallium* or *velum*, over the couple during the nuptial mass symbolized God's blessing for fertility, and during the benediction of the nuptial chamber the prayers wished explicitly for the fertility of the union.²¹⁸

The symbolical importance of the marital bed should not be underestimated. The secular world attached much importance to the consummation of the marriage, using the marital bed as a metaphor for the spousal relationship.²¹⁹ The expression '*in thoro legitimo procreatus/a*' or '*aff öächta sengh*' was used of a legitimate child suggesting that there were legitimate and illegitimate beds in which children were procreated.²²⁰ The children born of the first wife could be called the children 'of the first bed'.²²¹ The word 'bedfellow' and its Latin equivalent *conthoralis* were used as synonyms for spouse.²²² Moreover, in wedding formulas the contracting couple swore each other fidelity in bed and board.²²³ All

²¹⁷ For Iceland, Frank, "Marriage," 475; Jochens, "The Church," 380; Hastrup, *Culture and History*, 95; for France, see e.g. Duby, *Love and Marriage*, 18–19, 26. As to Florence, see e.g. Brucker, *Giovanni and Lusanna*, 55. See also Turlan, "Recherches," 485–486; Carlsson, *Jag giver dig min dotter*, I, 147–150; Roper, "Going to Church," 92; Tedre, "Eestiläiset häät," 97–98; Cistov, "Pohjoisvenäläiset häät," 126.

²¹⁸ Westermarck, *The History*, II, 466–489; Knuutila, *Avioliitto*, 500–513, 583–585. See also Molin – Mutembe, *Le rituel*, 228–235, 264–267.

²¹⁹ See also Hacke, *Women, Sex and Marriage*, 116.

²²⁰ 11.5.1374, *DS X*, 1–2, doc. X 320, 286; 9.8.1354, *DS VI*, doc. 5046, 512; 4.12.1369, *DS IX*, 1–2, doc. 8014, 631; *Saköresbok för Medelpad 1541–1609*, 169; *HFKP*, 484.

²²¹ Howell, *The Marriage Exchange*, 42.

²²² 4.11.1504, *FMU VI*, doc. 5078, 347; 29.10.1523, 118, *BHBR*, 211; 28.4.1524, 210, *BHBR*, 278; Klassen, "The development," 163, 177, note 1.

²²³ E.g. Molin – Mutembe, *Le rituel*, 116. See also *ibid.*, 156.

this shows how the conjugal bed was a well-known and international symbol for the marital relationship.

In medieval Sweden the marital bed was a particularly potent symbol of marriage. Beds and bedclothes were often included in the dowry.²²⁴ When the marital relationship was referred to, it could be said that the husband 'had her [his wife] in bed'. An early-sixteenth-century inheritance dispute described the deceased as 'the wife Bengta, whose brother's daughter's daughter the above-mentioned Lindorm [the plaintiff, acting as his wife's legal representative] had in bed'.²²⁵ The bed also symbolized the marital property rights and the joint conjugal estate. If a spouse died, the survivor was entitled to keep the marital bed with all its appurtenances, along with certain other property, before the rest was divided amongst the heirs.²²⁶ The purchases the marital couple made together were called 'bed purchases' (*sängaköp*), while the wedding formula spoke of the woman being wedded to 'half the bed', meaning all her marital property rights.²²⁷ In addition, killing someone's spouse or committed adultery with him/her was called 'bed robbery' (*sängerrån*), for depriving the person of his or her bedfellow. Viricide or uxoricide was called a 'homicide within the bed' (*inomsängsdråp*).²²⁸

More tangibly, the bed symbolized especially the woman's obligation to be faithful to her husband. A man who caught his wife in the act of adultery in the marital bed had the legal right to kill her and/or her lover unmolested provided that certain procedural rules were followed.²²⁹ Anthropologists have explained this as deriving from the importance of the consummation of the marriage. As the symbolic consummation

²²⁴ 29.5.1447, *FMU III*, doc. 2700, 412; Kjellman, *Bröllopsgåvan*, 90–94.

²²⁵ *BSH V*, doc. 172, 227. See also 17–21.6.1529, *GFR VI*, 143.

²²⁶ *SdmL*, G 6, 67; *UL*, Å 10, 68; *VmL*, Å 10, 48; *HL*, Å 10, 305–306; *VgL*, Å 10, 48; *MEL*, G 16–17, 44–45; *KrL*, G 16–17, 48–49; *Bj*, 27, 465; *MESL*, G 9:3–6, 42–43 and 12–13, 44; *SL*, G 9, 19 and 12–13, 20; 24.5.1560, *EST*, 107. For the importance of beds as property and feminine territory, Howell, *The Marriage Exchange*, 35, 66–67, 81, 150; Roper, "Going to Church," 90; Roper, *The Holy Household*, 145, 150.

²²⁷ *VmL*, Å 8:3, 47; *DL*, G 11:5, 81; *HL*, Å 9:1, 305; *UL*, Å 9:1, 68, *J* 3, 133; *MEL*, *J* 19:1, 77. Cf. *UL*, *J* 3, 131–132.

²²⁸ E.g. *UL*, *Kk* 15:3, 26 and *M* 13, 98; *VmL*, *M* 12, 71 and *J* 13, 109; 21.2.1604, *SHD 1601–1651*, 19 (wife killed); Ylikangas, *Väkiavallasta*, 46–47.

²²⁹ 5, King Magnus Ladulås's statute, printed in Åqvist, *Kungen och rätten*, appendix. On the statute, see, *ibid.*, 69–73. *SdmL*, G 4:1, 66; *HL*, Å 6, 304; *UL*, Å 6:2, 66; *ÖgL*, E 26, 42–43; *DL*, *Kk* 9:4, 7–8; *VmL*, Å 6:2, 46; *VgL* I, Om mandråp 11, 26; *VgL* II, Dräparebalken 22, 259–260. See also *SkST*, 52, 196; *JL* 3.37, 138–141; Köstler, "Ringwechsl," 7–8; Jacobsen, "Sexual Irregularities," 77, 79; Treggiari, *Roman Marriage*, 270–275, 282–285; Ruggiero, *The Boundaries of Eros*, 67–68.

of the marriage, the bedding in front of witnesses was ‘the defining element of marriage’, witnessing intercourse was like witnessing marriage. ‘By engaging in an act of “marriage” in front of the husband, the adulterer assumed the identity of the husband’.²³⁰ Even the wife had the right to kill or mutilate her rival—but not her husband—under such circumstances according to some provincial laws.²³¹

Later, when the obligation of fidelity was also extended to the husband, a sexual *faux pas* of either spouse was described as ‘stepping out of his/her marriage bed’ or ‘polluting the marriage bed’.²³² Ejecting the wife from the house and replacing her in her bed with a concubine meant denial of her status as a legitimate wife, matron and mistress of the household. The first act robbed her of her keys, the visible signs of the matron, and the second of the marriage bed, the symbol of the legitimate wife. As such an insult could provoke feuding between the families, this grave insult both to her and her kin had to be compensated by the husband with a substantial fine.²³³

When discussing the origins of the bedding of the couple, a question hotly disputed in Finland and Sweden in the 1950s and 1960s,²³⁴ one must begin by distinguishing between bedding (*copula carnalis de jure*) and consummation (*copula carnalis de facto*). Medieval Swedish matrimonial law considered only the former to be of legal consequence, while the latter, actual physical consummation (*commixtio sexuum*),²³⁵ was of relevance only for canon law. It should be noted that consummation of the union was not mentioned in Swedish matrimonial law, while the bedding and the morning gift only implied consummation.²³⁶ Had the

²³⁰ Hastrup, *Culture and History*, 135.

²³¹ 7, King Magnus Ladulås’s statute, printed in Åqvist, *Kungen och rätten*, appendix; UL, Å 6:1, 66; SdmL, G 4:1, 66; VmL, Å 6:1, 46. For Irish and Welsh law, see McAll, “The Normal Paradigms,” 21; Owen, “Shame and Reparation,” 51.

²³² Ylikangas, *Väkiwallasta*, 92; 12.3.1563, 22.3.1566, Konung Erik XIV:s nämnds dombok, 81, 222, 237; *KO 1571*, Ordning om Ehtenskapet, 117; *Åbo stads dombok 1623–1624*, 19. For equivalents in canon law, see e.g. X 4.17.4: ‘*virī sui torum maculans*’ and X 4.1.12: ‘*vir matris torum polluit*’ and in marriage sermons, *Medieval Marriage Sermons*, 258–259.

²³³ 7, King Magnus Ladulås’s statute, printed in Åqvist, *Kungen och rätten*, appendix; HL, Å 4, 304; UL, Å 6:3, 66; VmL, Å 6:3, 46; GL, Tillägg C, I, 241; VgL II, G 17, 286. See also Owen, “Shame and Reparation,” 51.

²³⁴ E.g. Carlsson, *Jag giver dig min dotter*, I, 194–195; Hemmer, “Om bilägrer,” 330–331, 337–340; Hemmer, *Suomen oikeushistorian oppikirja* II, 11–12. Cf. Söderlind, “Book review,” 181.

²³⁵ For *commixtio sexuum*, the mingling of the sexes, see e.g. Duby, *The Knight, the Lady and the Priest*, 175. Cf. Pedersen, *Marriage Disputes*, 3–4, note 7.

²³⁶ See also Carlsson, *Jag giver dig min dotter*, I, 151, 196–199.

institution of the morning gift been inexorably linked to the moment when the spouses really became one flesh, one could expect that actual consummation would have been crucial. However, there is no known case from medieval or early modern Sweden in which the property consequences of the bedding or of the morning gift were disputed because of non-consummation.²³⁷ Nor have I come across any references to traditions of displaying the bloody sheets or the bride's bloody chemise to mark consummation and loss of virginity found the Bible, Jewish culture and in Slavonic areas.²³⁸ Yet in many legal cultures weddings were associated with the sexual act of consummation. In Latin (*nubere; nuptiae*) and Greek (*gamoi*) the words to marry and wedding had sexual connotations of intercourse.²³⁹

Even in canon law consummation came to contribute to the indissolubility of the marital union (see further Chapter 2.4). The morning gift may have obtained 'new symbolic meaning from the Church's notions of marriage', as has been suggested, but the Swedish sources do not provide positive evidence for this view.²⁴⁰ Besides, if the emphasis on consummation (or bedding) had been favoured by the Church, one might assume that when the ecclesiastical influences became stronger in the course of the Middle Ages and that the custom of linking the property consequences of marriage to the bedding of the couple were accentuated. In reality the picture is the reverse. The notion that the Church actively participated in giving legal meaning to consummation is difficult to reconcile, e.g., with the Church's citing of the chaste three nights of Tobias (discussed in more detail in ch. 2.4) that were to follow every marriage and precede the consummation of the union. The three chaste nights of Tobias were recommended even for medieval Swedish couples as a God-fearing custom and a means of evading excessive and immoderate love or lust between the spouses, compared with adultery.²⁴¹

It was part of the Church's strategy during its expansion to mould existing marriage customs that were not in blatant conflict with canonical norms by giving them a Catholic significance and content, and

²³⁷ Cf. Spierenburg, *The Broken Spell*, 231.

²³⁸ Carlsson, *Jag giver dig min dotter*, I, 148, 150; Sarmela, "Suomalaiset häät," 35; Levin, *Sex and Society*, 87; Deut. 22:13–21; Weinstein, *Marriage Rituals*, 399–402, 446–447.

²³⁹ Reynolds, *Marriage*, 224–225, 329–331.

²⁴⁰ Arnórsdóttir, "Marriage," 187. See also Lehmann, *Verlobung*, 82.

²⁴¹ *De septem sacramentis*, cap. VII, 204.

thus to ‘Christianize’ the customs. This is also what happened to the Germanic custom of bedding the couple—both in Scandinavia and other regions, such as France. Indeed, in the Gallican Church, the blessing of the bridal couple in the nuptial bed (*benedictio in thalamo*) was the first ecclesiastical marriage rite, and the benediction in church was introduced only later.²⁴² As will be discussed below in Chapter 3.1, the Church ‘Christianized’ the bedding by instituting the blessing of the conjugal bed. Later, in the High Middle Ages, the Church’s influence on marriage formation came to revolve around the question of consent, but in the old Germanic lands of France and Germany, for example, bedding retained its significant role as a legal act determining the creation of the property consequences of marriage.

1.4 *The Marriage Process and Property Consequences*

Property and Matrimony: Inextricably Intervoven

Economic exchanges and transfers have been essential elements of marriage in most, if not all cultures. In fact, some of them, like the payment of the bride price,²⁴³ have been regarded as the constitutive legal acts of marriage. Ethnologists have classified many types of such property exchanges. Apart from the bride price, perhaps more accurately defined as a pledge or surety from the groom to the bride’s father or guardian, or a personal work performance, the groom also gave gifts to his bride, e.g. the morning gift. The bride’s family gave property with the bride, often classified as her dowry or advanced inheritance, and the kin groups also exchanged gifts. The function of the mutual giving and receiving of gifts was to bind the individual members to each other and to the union. This contributed to the acceptance of the new couple and the kinship ties, with its connected duties and responsibilities. In addition, relatives gave wedding gifts to the new couple. In Sweden, the wedding gifts of the larger community were given at the wedding or collected by the bride in advance.²⁴⁴

The bigger the property involved, the more care was usually taken getting every detail right in the negotiations and rituals. In fact, one

²⁴² Ritzer, *Formen, Riten*, 203–208.

²⁴³ Westermarck, *The History*, II, 393–395.

²⁴⁴ Sarmela, “Suomalaiset häät,” 12–13; Westermarck, *The History*, II, ch. 23.

could almost say, slightly paraphrasing Roper, that wedding rituals partly existed to dramatize the property transfers linked to marriage.²⁴⁵ However, the emphasis on mutual property exchanges, gifts and demonstrations of wealth, power and honour could turn the less well-off against marrying and instead preferring concubinage, which required no paraphernalia, dowry, dower or morning gifts. Poverty could preclude many from marrying or at least delay the wedding.²⁴⁶

For medieval people 'marriage was the principal vehicle for the transfer of property between generations and the chief nexus for the formation of enduring social bonds',²⁴⁷ while in any legal system 'the law of marital relations is concerned mainly with rights to property.'²⁴⁸ In many cultures the betrothal was the main event of marriage formation, while the transfer of the bride was merely the execution of the contract. In medieval and sixteenth-century Germany and Sweden the engagement, connected with the financial arrangements of the union, was considered binding precisely because of them even if they only were finalized by the wedding ceremonies. Marital property arrangements were not empty formalities, 'the union of property' being a basic aspect of marriage.²⁴⁹ Indeed, among many peoples the fulfilment of the economic aspects of the marriage, such as the payment of the bride price, are connected to the final conclusion of the marriage, such that the transitional period might last for several years. In such cases, sexual relations were initiated after the betrothal, but the wedding feast was arranged and marriage as a social act concluded only after the financial arrangements had been finalized.²⁵⁰ In fact, even in royal and princely circles the default of the bride's family on the payment of the dowry could lead to domestic difficulties and repudiation as one party had been defrauded by the other to enter the contract.²⁵¹

Certain formalities had to be observed for legal acts, whether gifts of land or betrothals, to be legally valid, and the witnesses were essential to prove or disprove the contents of the legal act and the meeting of formalities. Although Swedish law knew several marital property

²⁴⁵ Roper, "Going to Church," 71. See also Donahue, "English and French Marriage Cases," 359; Westermarck, *The History*, II, 396.

²⁴⁶ See also Holtan, *Ekteskap*, 122–123.

²⁴⁷ Howell, *The Marriage Exchange*, 3.

²⁴⁸ Jenkins, "Property Interest," 69.

²⁴⁹ Roper, *The Holy Household*, 150–151.

²⁵⁰ Gennep, *The Rites of Passage*, 119–121.

²⁵¹ Brundage, "Matrimonial Politics," 272–273, 282.

exchanges—betrothal gifts, dowry and morning gift—none of these were obligatory in the sense that their omission would have been penalized by the law.²⁵² However, all of them were profoundly ingrained in custom and the inheritance system.

The Swedish process of marriage formation was both public and formal. In fact, these two went hand in hand. Such features were typical of an oral legal culture without a well-developed administrative system. The witnessed legal acts, when correctly performed, were authoritative and binding in themselves, while their written form was no precondition for the validity.²⁵³ Unlike legal cultures where written documents such as marriage contracts (*tabulae nuptiales*), including mentions of dowry and dower rights, were used for the purpose of proving the existence of marriage, in Sweden the oral legal culture rested heavily on witnesses. The witnesses not only testified to the possible property exchanges, but also to all the stages of marriage. The written form was not obligatory for the validity of the legal act. In medieval Swedish marriage disputes, marital property exchanges were not used as evidence or legal arguments for or against marriage. Rather, the lawful performance of the betrothal or trothplight was emphasized. The formality of the act was considered decisive rather than its written manifestation.

The wedding costs were borne jointly by the families. The issue was occasionally raised at the distribution of an estate after the death of the parents or the daughter. In a dispute after the death of a childless couple, it was agreed that the wife's father would receive six marks for the expenses he had incurred in his daughter's nuptials. The husband's heirs could keep all the betrothal (or wedding) gifts (*alle hederss gåffuor*) of the childless couple, and after the wife's third of the chattels and acquired property had been given to her father, the rest of the estate went to the husband's heirs.²⁵⁴ As discussed above, medieval Swedes had to dip their hands deep into their pockets in order to meet all the costs of marriage. No wonder some had borrow from others.²⁵⁵

²⁵² Pylkkänen, *Puoli vuodetta*, 83–84.

²⁵³ See also Stock, *The Implications of Literacy*, 43–50, 56–57.

²⁵⁴ 26.11.1550, *HD 1545–1570*, 46. See also 26.1.1553, *HD 1545–1570*, 64; 3.7.1553, *ibid.*, 70; *Dombok för sydvestra Tavastland 1506–1510*, 293.

²⁵⁵ *SST IV*, 1.9.1505, 83.

Before the Wedding and Bedding: Friend Gifts, Dowry and Other Transactions

As argued above, the Swedish matrimonial process was legally initiated by the betrothal. From an international perspective the engagement or betrothal was also the paramount step of the property agreements. At this point, the transactions would be agreed upon months before the actual wedding or solemnization.²⁵⁶ At the betrothal the bride's marriage guardian and the groom agreed on the property she would receive as her dowry from her marriage guardian and as her morning gift from the groom.

Certain property exchanges took place already at the betrothal: in fact, the betrothal gifts have been interpreted as a condition to the validity of the betrothal.²⁵⁷ The provincial laws presupposed that the suitor give presents or 'friend gifts' (*vingäff*) to the bride's kin and marriage guardian at the betrothal. The friend gifts given to other kinsmen became immediately irrevocable, whereas the marriage guardian's only after the bedding of the couple.²⁵⁸ These were probably intended as signs of earnestness of intent, good will and future alliance. However, the later medieval laws do not mention the friend gift any longer.²⁵⁹ Yet, this custom still prevailed in seventeenth-century Lapland, where suitors gave gifts according to their wealth to their brides' parents, siblings and closest relatives. These gifts could be of considerable value, e.g. a silver tankard, a copper kettle and a bed or bedclothes to the bride's father, a silver belt, a dress and a silver collar to the mother, and silver spoons to the other relatives.²⁶⁰ The insights into the practice of the property exchanges involved in the marriage process have only survived in the records because something went awry or not as anticipated in the process. When marriage followed its normal course and there were no conflicting interests between the parties and their kin, property exchanges left no trace. Apart from the law texts themselves almost nothing is known about the friend gifts, for example what kinds

²⁵⁶ Smith, "Marriage Processes," 67.

²⁵⁷ Carlsson, *Jag giver dig min dotter*, I, 63–64; Pylkkänen, "Avioliiton historiaa," 80.

²⁵⁸ ÖgL, G 9:2, 105; UL, Å 1, 63; VgL I, G 2, 96; VgL II, G 2, 282. See also VmL, Å 1, 43. Cf. VgL III, 67, 406.

²⁵⁹ E.g. MEL, G, 39–47.

²⁶⁰ Kjellström, "Saamelaisten kosinta," 154–155. See also Heikinmäki, *Suomalaiset häätavat*, 135–139.

of gifts were given and to whom. The older law of West Gothia states only that the friend gift was three marks.²⁶¹

The silence of the sources applies also to the dowry. Unlike many other regions of medieval Europe, where marriage contracts specified the dowry, in medieval Sweden dowries hardly left any traces because written agreements were not customary. Even in inheritance disputes, the property given as dowry in advance was not necessarily specified. Originally in Scandinavia only sons inherited their parents, as daughters received their share in advance as dowry upon their marriage. In this respect, customs probably varied from region to region.²⁶² However, this practice seems to have changed in the mid-thirteenth century, when Earl Birger, the most powerful man of the realm, reputedly granted daughters the right to inherit, but only half of what her brother inherited. This rule was probably a result of Danish influence.²⁶³ The system was that of partible inheritance as, according to their sexes, the children were entitled to similar shares of parental property. The eldest son was not favoured in law although he may have been the preferred heir in practice. The inheritance system can be illustrated by a few simple examples. If a couple left a daughter and son, the daughter received one third and the son two-thirds, but if they had two sons and one daughter, each son received two-fifths and the daughter one fifth. If, again, the couple left only daughters, each of them got equal shares. In some exceptional cases, the daughter or sister was granted 'a brother's lot', as much as a brother.²⁶⁴ In towns and in the region of Värend in Småland the inheritance lots of sons and daughters were of equal size.²⁶⁵

The dowry did not need to be given at the wedding. For example, according to the law of East Gothia, if a married woman died before receiving her dowry, it was to be paid out immediately after her death.²⁶⁶ Swedish law presumed that parents could give a dowry to a son as well as to a daughter. The dowry would be taken into account as an

²⁶¹ VgL I, G 2, 96. This provincial law may have been influenced by Norwegian law.

²⁶² Hemmer, *Suomen oikeushistorian oppikirja* II, 37–38; Sawyer – Sawyer, *Medieval Scandinavia*, 168, 181.

²⁶³ E.g. MEL, Å 1, 58, *KrL*, Å 1, 50. See also *JL* 1.5, 10–11.

²⁶⁴ E.g. Nordmark, "Nanne Kärling," 137.

²⁶⁵ Bj. 25, 464; MESL, Å 1, 56; *SL 1387*, Å 1, 24. In 1572 it was decided at the Synod of Uppsala (Synod of Uppsala 1572, *BSKH*, 29; Almquist, *Strödda bidrag*, 76–79) that the daughters of priests were to inherit according to the town law, i.e. as much as their brothers. See also Hansen, *Ordnade hushåll*, 160–162.

²⁶⁶ ÖgL, G 2, 101.

advanced inheritance when the children's lots were calculated, and it had to be returned to the estate after the death of the parent. If, for example, the bridegroom moved to live at his bride's farm, he could be the party receiving a 'dowry', an advanced inheritance portion or gifts from his parents, when he left home.²⁶⁷ A son could be given land as his (future) inheritance also in connection with or anticipation of his marriage.²⁶⁸

The dowry, part and parcel of their inheritance, could be constituted of all sorts of property, depending on the family's status, wealth and funds. Various types of movables were given: livestock, domestic utensils, jewellery, money, silver, etc. Especially, noble maidens could receive land in addition to chattels, but on a more modest scale even peasant daughters could expect chattels, possibly even land, as dowry. The daughters of wealthy burghers, merchants or artisans could inherit town houses made of stone, cabbage patches, plots or outbuildings in addition to the movables, with which the poorer maidens had to be satisfied.²⁶⁹ Occasionally, the dowry (and/or other wedding costs) could be borne by more distant relatives. Female relatives and servants could also be provided for by willing away some property to them 'for their marriage'. In Southern Europe, providing dowries for poor maidens was a common charity.²⁷⁰ While the law of East Gothia gave nine *öres* as the lawful (minimum) dowry, the law of Gotland attempted to restrict it to two marks in gold as part of its sumptuary legislation, especially concerning precious cloth. Only white linen could be given as a dowry, while black and scarlet fabrics were banned.²⁷¹

As mentioned above, the witnesses present at the betrothal were to testify to the existence of the contract and the promised amount of the future dowry. However, the dowry was usually not delivered until the wedding day, when it was taken to the groom's home.²⁷² In some

²⁶⁷ SdmL, G 5, 66; UL, Ä 8, 67; VmL, Ä 9–9:1, 48; VgL I, J 1, 133, Ä 21, 80; VgL II, J 1, 330, Ä 32, 276; MEL, G 12, 44; KtL, G 12, 48; *Vår äldsta kommentar*, G 12, 30; Carlsson, *Jag giver dig min dotter*, I, 72–73; Suvanto, *Yksilö*, 424–425. See also MESL, G 18, 46; SL 1387, G 18, 22; JL, 1.15, 18–19; Laurikkala, "Varsinaissuomalaisista."

²⁶⁸ 14.2.1586, *Upplands lagmansdombok 1581 och 1586*, 73, 75.

²⁶⁹ E.g. VgL II, G 2, 282. 11.8.1507, SST IV, 166–167; 9.8.1512, SST IV, 259; 18.2.1512, SST IV, 236–237; Questions of Regimentrådet 1540–1542, 140. Carlsson, *Jag giver dig min dotter*, I, 73–75; Suvanto, *Yksilö*, 191–192; Lamberg, *Dannemännen*, 78; Laurikkala, "Varsinaissuomalaisista." See also Palmer, "Contexts of Marriage," 43–46.

²⁷⁰ Lamberg, *Dannemännen*, 113; Origo, *The Merchant of Prato*, 183, 281–282, 343.

²⁷¹ ÖgL, G 2, 101; GL, Tillägg 3 (65), 240.

²⁷² ÖgL, D 5, 57; *ibid.*, G 11–12, 105.

countries, spousals or betrothal may have had a special significance for the liminal status of women, who could gain possession of property at the betrothal, whereas men received their inheritance after reaching majority. The betrothal as a rite of passage made women proprietors in anticipation of the marriage, as they were then in possession and control of their property until the wedding, when the control of the woman's property was transferred to the husband. The significance of such 'ritualized recognition of the bride's control of her marriage goods' is thought to have been greater when the daughter received her portion in kind rather than in cash.²⁷³ Yet, in medieval and early modern Sweden there was no interim period during which the bride was in control of her inherited property, although the property was agreed upon at the betrothal. Rather the woman's inheritance went straight from being administered by her legal guardian into her husband's hands.

The more complicated the property transactions made in anticipation of the wedding, the more problematic was their disentangling when the marriage failed to be completed. Occasionally charlatans attempted to profit from the initiated process and the property transaction without intending to keep their part of the bargain.²⁷⁴ In 1605 *her* Olof of Wallerstadh²⁷⁵ complained to the court about the conduct of Bengt Olsson. Bengt was lawfully betrothed (*fäst*) to his step-daughter, but after he had gone to war, the girl fornicated with another. When Bengt Olsson learned of his bride's conduct after his return, his initial reaction had been to reject her, but because of the family's requests and because the bride and her mother promised him extra money and silver, he promised to take her back. When Bengt had received the money and silver, at least 28 *dalers*²⁷⁶ and 2 silver tankards, however, he broke his promise and abandoned his bride, who had since died.²⁷⁷

In anticipation of the fulfilment of the marriage process, various other financial transactions, such as loans of money or items such as rings, could take place. In Jönköping in 1476, Katrine Ambiorna had

²⁷³ Peters, "Gender, Sacrament and Ritual," 87–91, 96. See also Ewan, "To the Longer Liver," 192–195.

²⁷⁴ Palmer, "Contexts of Marriage," 44–56, 58–66; Smith, "Marriage Processes," 67.

²⁷⁵ In medieval and early modern Sweden, the courtesy title *herr* was used both of noblemen and priests. When *her(r)*, lord or sir, is used in this book, the title refers to clerics. The title had been left untranslated for reasons of clarity.

²⁷⁶ A *daler* corresponded four marks, Lagerqvist – Nathorst-Böös, *Vad kostade det?*, 65.

²⁷⁷ 9.2.1605, *VST*, 368.

lent Jeppe Olsson's wife silver and money for her wedding.²⁷⁸ In a case from Vadstena from 1583, Per the Painter was sued as guarantor for the debt of Malin, the wife of the priest Olof of Wikilstada. Per and Malin had been courting at some point. Written evidence was presented at court that Per had wanted to marry her, and they had gone to bed as wife and husband. The marriage plans had evidently since gone awry, but Per tried wriggle out of his financial commitment by claiming that he had promised to guarantee the 200 mark loan if and only if she became his wife. However, the evidence presented pointed to the contrary, and the court sentenced Per to pay the sum.²⁷⁹

Before the marriage process had finally been completed, the couple had no relationship with each other involving property rights. As a court verdict from 1605 observed, 'as they [the trothplighted couple] had neither been betrothed nor married (*vigda*), neither was to inherit the other, but both keep what was theirs'.²⁸⁰ In a case from 1597, a widow had been trothplighted with a foot soldier who later died in Livonia. He had not delivered any of his property to her house, but both had instead stored their property separately, which is why the soldier's relatives were to inherit his property and she was to keep hers. Still, his relatives were to give her a barrel of rye from the field he had slashed, burned and sown while he was with her. In another case the couple had not been formally betrothed, only trothplighted, but the man had stored his property at the woman's farm. Here, too, the bride did not inherit, but she was to keep the gifts she had received.²⁸¹ Therefore, if the couple wanted to effect a transfer of property, for financial security or other such purposes, this had to be done separately by drafting a will or deed of gift. In a letter from 1387 two men witnessed that the subsequently deceased Folke Karlsson 'warmly' gave his bride, maid Katerina Staffansdotter, an estate for life. He had specially requested that the signatories testify to the donation in case he died.²⁸²

The secular courts dealt with property aspects relating to betrothals although they sent the couples to the ecclesiastical authorities to formally break off the betrothal. Usually these disputes at secular courts concerned betrothal gifts. In 1596, Ingrid Jönsdotter and Mårten i

²⁷⁸ 1476, *JST*, 69.

²⁷⁹ 2.5.1580, *VST*, 78–79.

²⁸⁰ 11.2.1608, *SHD* 1601–1651, 25 (=11.2.1608, *Uppländska domböcker* 1608, 33).

²⁸¹ 8.3.1597 Selebo, *Sörmländska härads domböcker*, 97; 11.2.1608, *SHD* 1601–1651, 25.

²⁸² 15.7.1387, doc. 2332, *SRAP II*, 142. See also *CEAP*, 202.

Pukebodha had fallen out and wanted to break off their engagement. In addition, he accused her of theft, for which the court found no proof. She had given her fiancé more gifts than he her, and she was encouraged to take hers back. For the rest, the court sent them to the chapter.²⁸³ When Nils Persson from Rösilda sued Per Gummeson in 1603, the issue concerned his former engagement to Per's daughter. Nils Persson had gone to East Gothia and been away for over a year and, because his brother had made it known that Nils was dead, Per had given her to another man. Nils wanted back the betrothal gifts he had given to her father.²⁸⁴

On another occasion, Marit Jakobsdotter of Solais in Hammarland had abandoned her fiancé without any reason after she had collected bride help and been given two pounds of wool. She was fined nine marks and had to return the wool.²⁸⁵ However, the gifts given to a betrothed bride by the groom were not reversible if he died. In a case from 1602 the relatives of the deceased groom tried to get back the spoon and the ring he had given his 'legally trothplighted' bride Margrethe, but the court awarded them to her. The court reached a similar decision in a case from 1608, in which the woman was allowed to keep her gifts, the value of which amounted to 22 dalers. He was then sentenced to give her five *dalers*, probably the value of the gifts.²⁸⁶

After the Wedding and Bedding: Communal Property and Guardianship

At some point in the evening the bridal couple was put to bed in the presence of the wedding guests. As discussed above in Chapter 1.4, this was one of the most important stages of the Swedish marriage process, because several spousal rights and duties were linked to it. The bedding also made irrevocable the groom's friend gift (*vingäff*) to the bride's marriage guardian, her *giftoman*.²⁸⁷ This was probably a precaution intending to guarantee that he retained an interest in giving the bride away as promised.

The marital rights to a part of the couples' joint estate or community property were created at the bedding. Swedish marital property was in

²⁸³ 30.6.1596 Hölebo, *Sörmländska härads domböcker*, 55.

²⁸⁴ 5.11.1603, *Östra härads dombok 1602–1605*, 72.

²⁸⁵ 21.11.1588, *ÅSL*, 228. See also 30.11.1588, *ÅSL*, 248.

²⁸⁶ 21.1.1602, *SHD 1601–1651*, 15; 11.2.1608, *ibid.*, 25 (=11.2.1608, *Uppländska domböcker 1608*, 33). See also 5.6.1618, *ibid.*, 42.

²⁸⁷ ÖgL, G 10:2, 105; VgL I, G 2, 96; VgL II, G 2, 282. See also DL, G 11:4, 81.

principle divided into three groups: inherited land, always reverting to the next of kin, acquired land and chattels.²⁸⁸ This estate was formed by the couple's acquired property, whether in movables or immovables. Two-thirds of this community property was the lot of the husband and one-third the wife's.²⁸⁹ In towns, by contrast, the estate was divided fifty-fifty.²⁹⁰ The marital rights to the other spouse's property may have been extended in the course of the Middle Ages, as the 1442 law excluded only inherited land from the joint estate. Movables were included even if acquired before marriage.²⁹¹ If the bride died before she had reached his home, her corpse was to be taken back to her closest kin, who inherited her dowry and property. In such a case, the groom retained his gifts to her for the bridal procession. If the opposite happened, i.e. the groom died before the procession reached the wedding house or before the bedding, the bride was entitled to keep the gifts received from him for the wedding procession but received nothing else. Otherwise, she was entitled only to her own property.²⁹² According to the Laws of the Realm, the dowry was given to the groom on the evening of the wedding, and the bedding was probably seen as a relevant factor in the delivery of the dowry.²⁹³

After the bridal couple had spent the night together, the groom became his wife's legal guardian, representing her in court, managing her property and suing and answering on her behalf. At this moment, the wife also assumed her husband's estate.²⁹⁴ After the marriage process had been completed, the husband gained complete control of his wife's property, which he alone was allowed to manage. He needed his wife's

²⁸⁸ See also more generally Donahue, "English and French Marriage Cases," 349–350; Howell, *The Marriage Exchange*, 198–217.

²⁸⁹ E.g. ÖgL, G 7, 103; VgL I, G 9, 99; MEL, G 19, 45; KtL, G 16–17, 48–49. See also Erickson, "The Marital Economy," 10–13; Dübeck, "Property," 129–130. For Augsburg, see Roper, *The Holy Household*, 145.

²⁹⁰ Bj. 24, 464; MESL, G 12, 44; SL 1387, G 12, 20.

²⁹¹ KtL, G 5:1, 45.

²⁹² KtL, G 6, 45. King Magnus Eriksson's laws left it unclear whether the necessary moment was when the bride had been put to bed with her groom or merely when she arrived at his home, MEL, G 6, 41; MESL, G 6, 40; SL 1387, G 6, 17. See also UL, Å 2:1, 65; VmL, Å 2:1, 45.

²⁹³ MEL, G 14, 44; KtL, G 14, 48; 29.5.1447, FMU III, doc. 2700, 412. See also Chojnacki, *Women and Men*, 84: in Italy, the dowry was only handed over to the groom after consummation and the tradition of the bride to the groom.

²⁹⁴ HL, Å 2:1, 303; ÖgL, G 7, 103; MEL, G 6:1, 9, 41, 43; KtL, G 6:1, 9, 46–47; MESL, G 8, 42; SL 1387, G 8, 18; *Vår äldsta kommentar*, G 9, 29. See also Dübeck, "Property," 127–128.

consent, though, in order legitimately to alienate her lands, whether through sale or barter. If he mismanaged her property or abused his power of alienation, his heirs became liable for it after his death. They might be sued for compensation for mismanagement, or the transaction could be revoked if the wife's permission had not been obtained. In a case from 1490, Erik Örseson accused Jöns of Skedekom of having exchanged away his wife's inherited land, which Erik himself had sold to Jöns. Erik's wife explained to the court that she had never known of the sale of her land nor ever consented to it. Although Jöns produced the deed of sale in court, it was ruled that there had been no 'pressing need or special reason' that the law insisted on, for the husband to sell his wife's land. Therefore, the sale was revoked, the husband was fined three marks for selling it unlawfully, Jöns was to keep his meadow and the barter of land he had made was annulled.²⁹⁵ In another case, the widow Katerin Larsdotter sued Jon Hwit, to whom her late husband had bartered away her land. She claimed that she had never given her consent to the transaction, because her husband had not bartered her land for better land, but for worse. Accordingly, the contract was revoked because of her lack of consent.²⁹⁶

However, during the marriage the husband had unrestricted power, while Swedish law knew no explicit legal recourse for the wife to restrict her spendthrift or ruthless husband. Nevertheless, in Sweden the married woman was not described in feudal terms as the ward of her husband, i.e. 'baron' or 'seigneur', as was the case in England and the Low Countries.²⁹⁷ It was rather the husband as head of the household to whom the other individual members were subordinated, irrespective whether they were wives, children or servants.

The bedding of the couple as a symbol of consummation was not unknown in other European regions. In medieval Wales, a bride's status was vacillating in relation to her kin on the one hand, and her husband on the other hand, between her giving away by her kin and the physical consummation of the union. Nevertheless, by the morrow of the wedding feast, her change of status had been completed. In the morning, the wedding guests would also witness any possible repudiation of the

²⁹⁵ ULD 1490–1494, 30.

²⁹⁶ ULD 1490–1494, 23–24.

²⁹⁷ Molin – Mutembe, *Le rituel*, 70; Howell, *The Marriage Exchange*, 161; Brand, "‘Deserving’ and ‘Undeserving’ Wives," 16, n. 19.

bride because of the lack of her virginity.²⁹⁸ In addition, in large parts of Europe customary laws contained visible Germanic influences, and the bedding of the bridal couple rather than actual consummation was mentioned as crucial in the property consequences of marriage, such as inheritance or dower rights. As some legal proverbs said: '*Femme gagne son douaire à mettre son pied au lit*' and '*Wenn die Decke über den Kopf ist, so sind die Eheleute gleich reich*'.²⁹⁹

In the German *Sachsenspiegel*, legal guardianship of the bride was transferred to the groom when he was wedded to her, but she became his legal peer when she went into his bed.³⁰⁰ Several Norwegian and Icelandic laws also indicate the bedding of the couple as the point at which the common estate of the conjugal couple was created. From that on, the bride and groom were entitled to mutual property rights, the husband became his wife's legal guardian and the children were considered legitimate.³⁰¹ In other areas where the Church was more dominant, efforts were made to link some of the marital property transfers to the ecclesiastical ceremony. This is probably why in England the dower rights of the wife were connected to the publicity of the church door at the wedding although this link may have become frailer and even disappeared in the later Middle Ages.³⁰² Only one of the Swedish provincial laws tried to connect all the consequences of marriage, even exchanges of property, to ecclesiastical solemnization.³⁰³ The fact that this rule was not taken into the national laws for the countryside and towns probably reflects the force of the traditional marriage process in medieval Sweden.

If the couple separated during the marriage, their property was divided by representatives of the parties or trusted members of the local community. The matter was different, however, if the separation was caused by the adultery of either spouse. The female adulteress had much more to lose than an unfaithful husband. He only lost his two-thirds share of the acquired communal property, but she risked everything: her third of acquired communal property, her morning gift

²⁹⁸ Jenkins, "Property Interest," 72.

²⁹⁹ Friedberg, *Das Recht der Eheschliessung*, 69; Freisen, *Geschichte*, 117–118; Frensdorff, "Verlöbniß," 12–13; Carlsson, *Jag giver dig min dotter*, I, 147–149.

³⁰⁰ *The Saxon Mirror* I: 45 and III:46, 81, 127; Friedberg, *Das Recht der Eheschliessung*, 22.

³⁰¹ Lehmann, *Verlobung*, 81–82; Carlsson, *Jag giver dig min dotter*, I, 147.

³⁰² Brand, "'Deserving' and 'Undeserving' Wives."

³⁰³ VmL, Å 7:1, 46.

and even her dowry.³⁰⁴ If she ran away from her husband or committed adultery, her husband continued to manage her dowry as long as the conjugal bond existed. After the death of the adulteress, her heirs inherited her dowry. In a case from Kalmar in 1427, Sten the Blacksmith was allowed to keep the share of his brother-in-law's (*sin swagh*) Störghe the Blacksmith's house, which his wife had been given as her dowry (*mædhergift*). As she had 'misbehaved' and run away from her husband Sten, he was entitled to keep the share until his wife died, at which time the property was to go to her heirs according to the normal inheritance rules as stated in the law.³⁰⁵ In fact, the forfeiture of the wife's property rights to her injured husband has been considered an important motive behind prosecution for adultery elsewhere in Europe.³⁰⁶

The Importance of the Morning Gift in Medieval Sweden

The morning gift, given as its name suggests on the morning after the wedding night, was, besides the dowry, the other of the two most important exchanges of marital property in medieval Sweden. Though geographically on the decline since the High Middle Ages, the morning gift was, or had been, known in former Germanic lands ranging from Northern Italy and Northern France to England, German territories and Scandinavia. In sixteenth-century Augsburg, for instance, the morning gift was still customary although its symbolical and financial value was not as high as formerly.³⁰⁷ Like bedding, the morning gift was of Germanic origin and had no direct equivalent in Roman law.³⁰⁸

³⁰⁴ E.g. HL, Å 5, 304; ÖgL, E 26, 43 (an adulteress did not forfeit her lands); VgL I, G 5:1, 98; VgL II, G 5–6, 283. MEL, G 11, 43; KtL, G 11, 48. Cf. MESL, G 10, 43; SL 1387, G 10, 19–20. See also Dübeck, "Kvindernes retstilling," 106; Ruggiero, *The Boundaries of Eros*, 51–55; Brundage, *Law, Sex, and Christian Society*, 408. In the Swedish version of Magnus Eriksson's Law of the Realm, the adulteress only lost her morning gift (MEL, G 11, 43), but the Latin translation from ca. 1500 (UUB, B 46, 41r.) implied she lost both her dowry and morning gift. The rubric was *Qualiter mulier perdit dotem et donationem*. This may have mirrored the interpretation in legal practice.

³⁰⁵ Around 10.8.1427, *Kalmar stads tänkebok*, 58; 19.11.1406, SD I, doc. 781, 594; Questions of Regimentrådet 1540–1542, 140–141.

³⁰⁶ Ruggiero, *The Boundaries of Eros*, 53.

³⁰⁷ *The Saxon Mirror* I: 20, 75, see also 193; Wendel, *Le mariage*, 166–167, 175; Klapisch-Zuber, *Women, Family and Ritual*, 223–224, 278; Howell, *The Marriage Exchange*, 214–215. Roper, "Going to Church," 72, 89; Roper, *The Holy Household*, 144.

³⁰⁸ In Florence, the *morgincap* became 'Romanized' as *donatio propter nuptias*, Klapisch-Zuber, *Women, Family and Ritual*, 278. See also Evans-Grubbs, "Marrying," 68–69, 83; Lupoi, *The Origins*, 39. Cf. Arnórsdóttir, "Marriage," 186; Reynolds, "Marrying," 32–33.

Many of the Germanic law codes use the vernacular word *morgingab* (or a variant like *morgengeba*, *morginegiva*) in their otherwise Latin texts. (The *morgingab* was only occasionally Latinized as *matutinale donum*.) This practice points to its different origin. Similarly, the morning gift was mentioned with its native name in some Anglo-Saxon dooms.³⁰⁹ Because of its origin, the name of the morning gift was preserved in the vulgar tongue in the Latin texts of the early medieval Germanic law codes. This also applies to older Swedish morning gift documents written in Latin. Although some occasional letters refer to the morning gift in Latin terminology, calling it *dos* or *donatio propter nuptias*, this is probably because there was no Latin equivalent to it and these were the nearest ones.³¹⁰ The Latin translation of Magnus Eriksson's Law of the Realm called the dowry *dos* and the morning gift *donatio propter nuptias*.³¹¹ Most Latin documents add in the vernacular: '*pro donacione propter nupcias wlgariter Mohrhons Giæf*'; alternatively merely '*Morghengeif*' or '*hindradaxsgefh*' in an otherwise Latin text.³¹²

Although the size of the morning gift was determined at the betrothal, most provincial laws and later royal laws of the Realm repeat over and over again that it was to be given in the presence of witnesses the morning after the wedding night. In fact, the Swedish name *hinterdaghs giæf* or *morgongiæf* implies this quite clearly.³¹³ This also corresponds to the practice in other areas. In *Sachsenspiegel*, for instance, the gift was to be given on the morning after the wedding night when the husband 'goes to table with her before breakfast'.³¹⁴ The fact that the gift had been given in accordance with the law on the second wedding day was also occasionally mentioned in legal practice, especially if the validity of the

³⁰⁹ 42.2, The Burgundian Code, in *Love, Marriage, and Family*, 28; Guerra Medici, "Women in Civil and Canon Law," 221–223; Ritzer, *Formen, Riten*, 224, 248; Wemple, *Women in the Frankish Society*, 45, 48; Reynolds, *Marriage*, 85; Carlsson, *Jag giver dig min dotter*, I, 209–210.

³¹⁰ As for *donacio propter nupcias* e.g. 29.10.1269, *DS I*, doc. 541, 451 and 5.2.1275, *DS I*, doc. 588, 490–491 and *dos*, 21.4.1292, *DS II*, doc. 1067, 140; 26.1.1299, *DS I*, doc. 1267, 283; 16.11.1305, *DS II*, doc. 1488, 461. The Swedish legal term *fastar* was also in the vernacular in certain Latin morning gift letters, 23.8.1285, *DS I*, doc. 811, 665; 26.1.1299, *DS I*, doc. 1267, 284. See also 16.11.1305, *DS II*, doc. 1488, 461.

³¹¹ E.g. UUB, B 46, 39v, 41r.

³¹² 23.8.1285, *DS I*, doc. 811, 665; June 1296, *DS I*, docs. 1165–1166, 212–213; 27.3.1299, *DS II*, doc. 1272, 288. See also e.g. 21.4.1292, *DS II*, doc. 1067, 140; 14.9.1301, *DS II*, doc. 1347, 348.

³¹³ E.g. SdmL, G 3:2, 65; UL, Å 4, 65; VmL, Å 4, 45. MEL, G 10:3, 43. Cf. Arnórsdóttir, "Marriage," 188; Petersson, *Morgongávoinstitútel*, 20–29.

³¹⁴ *The Saxon Mirror* I:20, 75.

gift was being contested. In a court case from 1490 it was stated that ‘after they have slept the night together, the husband was to give the wife the morning gift’.³¹⁵ Despite the clarity of the law in this matter, the nobility, to whom especially the function of the morning gift had become a status symbol, started to circumvent the law by supplementing the morning gift later after the wedding. For example, Arvid Kettilson augmented his wife’s morning gift (*augendo donacionem suam propter nupcias*) with more land.³¹⁶

In the Swedish mid-fourteenth century Town Law, more influenced by German law, the link between the gift and the bedding had become less evident. In towns, the morning gift was given before the bedding, on the first wedding day, and not the next morning as elsewhere. But even in town law bedding was still an important stage of marriage formation. The law explicitly mentions that the bride was to go to bed with the groom. This aberration of the usual Swedish rule was very likely due to the influence of foreign law on Magnus Eriksson’s Town Law via the north German town laws.³¹⁷ Under the general influence of Roman law, in the later medieval German towns the disparity between the morning gift and the Roman law of matrimonial property may have contributed to this development.³¹⁸ According to classical Roman lawyers, *inter vivos* gifts between the spouses were forbidden, which is why the nuptial gifts had to be given before the union became marital, even if this donation took place earlier on the same day of the marriage. Lombard law, influenced by Roman law on this point, also insisted that the morning gift be given on the wedding day, because in order to protect their heirs, married couples could not give each other presents later.³¹⁹ Later, this opinion was confirmed by glossators such as Vacarius (1120–1200?).³²⁰

³¹⁵ Oland, ‘xxde dag jwle’ 1490, *ULD 1490–1494*, 19.

³¹⁶ E.g. 6.1.1369, *DS IX*, 1–2, doc. 7829, 489; 18.1.1369, *DS IX*, 1–2, doc. 7833, 495 (*okte sinnæ husfru...morgongawo medh*); Petersson *Morgongåvoinstitutet*.

³¹⁷ *MESL*, G 6:3 and 9:2, 41–42; *SL 1387*, G 6 and 9, 17–18. This difference was also observed in legal commentaries, *Vår äldsta kommentar*, G 6, 28. Cf. *VgL II*, G 2, 282; Petersson, *Morgongåvoinstitutet*, 20–29; Carlsson, *Jag giver dig min dotter*, I, 215; Ylikangas, *Suomalaisen Sven Leijonmarckin*, 199.

³¹⁸ See also Wendel, *Le mariage*, 166–167.

³¹⁹ Dig. 24.1.1, Dig. 24.1.3, Dig. 24.1.9.2, Dig. 24.1.27, Dig. 24.1.66. Cherry, “Gifts between Husband and Wife”, esp. 34–37; Treggiari, *Roman Marriage*, 365–367, 370–371, 374; Evans-Grubbs, “Marrying,” 51–52, 65. Cf. Reynolds, *Marriage*, 26; Sjöholm, *Sveriges medeltidslagar*, 110.

³²⁰ Donahue, “The Case of the Man,” 24.

Many wedding guests probably stayed overnight in the wedding house, as their presence was necessary to witness the morning gift. Several of the provincial laws were not very clear about the procedure of promising the morning gift or the number of witnesses required. Usually, if land was given, the normal procedure of ceding land was to be used, while if chattels were given, the proper formalities of alienating chattels were applied.³²¹ Magnus Eriksson's Law of the Realm, however, specified that twelve men were to confirm the morning gift after the thirteenth had read aloud the vow.³²² If the morning gift was given in land, but the proper time or formalities were not observed, the husband's heirs had to give their consent. If chattels were given, the assent of the heirs was again necessary, if the husband had no surety.³²³ The witnesses of the morning gift documents probably represented those who were most powerful and influential among of the wedding guests: members of the royal council, nobility, clerics of various rank, judges, or other locally important people. It was customary at noble weddings that after the morning gift had been confirmed, a spear was thrown out of a window into the courtyard. Olaus Magnus claimed that this symbolized that 'the two have been united with each other and will forever live together'.³²⁴ Toasting probably also accompanied the giving of the gift, as documents occasionally mention that the morning gift was 'drunk'. According to some accounts, the groom drank his bride's toast when he arrived at the wedding house and promised her the morning gift. Moreover, after the morning gift had been given, the young wife, now with her hair covered, moved among the wedding guests, offering them drinks from a silver goblet as a sign of her new status as mistress of her household.³²⁵

Although Swedish medieval sources are relatively scarce, some hundreds of surviving morning gift letters emphasize the financial and social importance of these gifts. These documents were especially important for the nobility, because noblemen customarily gave land as morning gifts to their brides. The lands or farms had to be defined. It was also often specified whether the land was inherited or purchased: as inherited

³²¹ SdmL, G 3:2, 65; HL, Å 4, 304; VmL, Å 4, 45.

³²² MEL, G 10:3 and n. 54, 43,55; KtL, G 10:3, 47.

³²³ ÖgL, G 10–10:1, 104–105.

³²⁴ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 98; Carlsson, *Jag giver dig min dotter*, I, 223–224.

³²⁵ 9.9.1454, FMU IV, doc. 2955, 60; Carlsson, *Jag giver dig min dotter*, I, 223–224; Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 106.

land could not be freely alienated, it was necessary that the closest heirs of the donator confirmed the deed.³²⁶ Ordinary people who did not exceed the maximum value of the morning gift as prescribed by law and who did not give land did not need written documents.

Although the morning gift was known all over Scandinavia, the late medieval practice had regional variations. In later medieval Denmark, Norway and Iceland the morning gift was apparently rare and more aristocratic. However, some Norwegian laws, like the *Gulatingsslov*, mention the morning gift.³²⁷ The custom of bedding and morning gifts was introduced in Finland via Sweden in the course of the Middle Ages.³²⁸ Moreover, the distinction between late medieval Denmark and Sweden concerning the legal formalities in giving the gift was so clearly felt that it was a major issue in an inheritance dispute between two leading noblemen in the later fifteenth century.³²⁹ In Sweden, morning gifts were by no means limited to aristocratic marriages, even if the majority of the extant medieval patents originated from the nobility. There is evidence that morning gifts were given in all social echelons, including peasants, even in the sixteenth century.³³⁰ To sum up, the institution of the morning gift was strong and persistent in medieval Sweden.

The morning gift was dormant, i.e. it was held in trust, while the husband was still alive, but after his demise the widow could freely dispose of this property. If the wife died first, the morning gift was transferred to the children of that marriage, and then it was reckoned among the children's maternal inheritance. Indeed, as medieval Swedish widows could not alienate their inherited lands as easily, they often willed away or donated their morning gifts.³³¹ In medieval Sweden as well as in Germany, the morning gift was linked to the fidelity of the wife: proven adulteresses or wives who had killed or deserted their hus-

³²⁶ See, e.g. 10.4.1307, *DS II*, doc. 1541, 493; 8.2.1349, *DS VI*, doc. 4396, 77; 14.9.1356, *DS VII*, doc. 5644, 91.

³²⁷ Arnórsdóttir, "Marriage," 188; Holtan, *Ekteskap*, 31–32; Lehmann, *Verlobung*, 2–3; Gaunt, *Familjeliv*, 61.

³²⁸ Knuutila, *Avioliitto*, 544–545.

³²⁹ *Arfstwisten emellan Erik Eriksson (Gyllenstierna) och Ture Turesson (Bielke) 1451–1480*, xviii–xix, 39–41.

³³⁰ *Dombok för sydvestra Tavastland 1506–1510*, 130, 232, 265, 268; Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 106; e.g. Ulvila, 21.7.1550, *SVT II*, 5; 21.2.1586, *Upplands lagmansdombok 1581 och 1586*, 106–107; 11.3.1586, *Upplands lagmansdombok 1581 och 1586*, 194. Cf. Arnórsdóttir, "Marriage," 188.

³³¹ MEL, G 10:1, 43; Rantala, "Donations of Widows"; Carlsson, *Jag giver dig min dotter*, I, 213–215. Cf. Bj. 27, 465; MESL, G 9:3–5, 42–43; SL 1387, G 9, 19.

bands lost their morning gifts and all other marital property rights.³³² The occasional occurrence of claims made by the deceased husband's heirs that the widow had killed her husband or committed adultery is also understandable in this light, the intention being to deprive the widow of both the morning gift and the widow's third.³³³

Incidentally, it has been observed that an emphasis on the dower as a gift from husband to wife, an example of which is the morning gift, as the major presentation at marriage coincides with the Church's widening definition and more effective enforcement of the exogamy rules in Europe. The custom of dower removed wealth from a lineage and may have helped to weaken kin groups, which has been tentatively suggested as a reason why the Church encouraged it as a substitute for bridewealth.³³⁴ Morning gifts were accused of at least potentially impoverishing the nobility. In practice the provision depended on the status of the widow and the corresponding amount of the morning gift. While the queen was supposed to be able to live on her morning gift lands until her death, the same probably applied to wealthy noble widows, whose morning gifts were in fact much higher than the law prescribed. The same did not apply to the peasant widow: the sum of three marks, prescribed by some provincial laws, corresponded to the cost of her upkeep for a year.³³⁵

As mentioned above, the morning gift could be given in land, chattels or money, and the size of the morning gift depended on the status of the groom. While the laws of Hälsingland, Uppland and Bjärköa did not restrict its the size or amount, the Crown came to issue sumptuary legislation against excessive morning gifts. While a knight could give his wife property worth forty marks, the amount was twenty marks for a squire, ten for a lesser nobleman and three for a yeoman peasant, while others could only give morning gifts worth one mark. If these amounts were surpassed, the excess was to be null and void, and the heir could

³³² ÖgL, E 18–19, 40–41 (if a husband killed his wife, he lost the right to her chattels); UL, G 5, 65–66; VmL, Å 5, 45. *MESL*, G 10, 43; *SL 1387*, G 10, 19–20; *MEL*, G 11, 43 and E 33:11, 196; *KrL*, G 11, 48; 2.3.1586, *Upplands lagmansdombok 1581 och 1586*, 134; Petersson, *Morgongåvoinstitutet*, 291–292. For Augsburg and England, see Roper, “Going to Church,” 89; Roper, *The Holy Household*, 145; Brand, “‘Deserving’ and ‘Undeserving’ Wives,” 8–15.

³³³ RA, Fotostatkopior av medeltida pergamentsbrev i Riksarkivet, Lödöse 11.6.1442, Skara 31.12.1453, Skara 4.1.1454; *ULD 1490–1494*, 22.

³³⁴ Quale, *A History of Marriage Systems*, 174.

³³⁵ E.g. DL, G 6, 79; VgL I, G 9, 99; VgL II, G 16, 286; Carlsson, *Jag giver dig min dotter*, I, 217; Mäkelä, *Suwesta perheeseen*, 36; Pykkänen, “Avioliiton historiaa,” 84.

demand its return.³³⁶ The town law disallowed morning gifts exceeding twenty-four Swedish marks in value. However, these limitations were customarily disregarded, as was the forty-mark penalty payable to the king for violating the law. No lawsuit is known from the Middle Ages or from the early modern period in which the Crown actually prosecuted offenders. These maximum amounts immediately fell into desuetude and the morning gifts increased without any serious attempts having been made to implement the law. Especially among noble families, the morning gift had become an important status symbol. The witnesses of excessive morning gift charters often included members of the high aristocracy, even royal judges who would have been in an ideal position to enforce the law, if it had been in accord with popular values.³³⁷

Efforts were occasionally made to limit the practice. As the statute of Tälje of 1493 noted, in earlier days morning gifts were higher than law provided, which could harm the rightful heir and cause strife and ill-will. In order to remedy these excesses, both nobles and commoners were henceforth to give within the limits of the law. The bishops and *lagmän* were to supervise that the statute was obeyed; the excess was to be impounded by the Crown and a forty-mark fine levied.³³⁸ In the early seventeenth century, Johan Skytte commented on the complete disregard for the penalty for the limits of morning gifts. He justified the practice by referring to a long legal tradition that had been confirmed many times. What had thus been introduced by the tacit consent of the people, had the power of law.³³⁹

Although the original function of the morning gift was disputed, by the thirteenth century no clear links remained between it and the woman's virginity. In medieval Sweden even widows were regularly given morning gifts as, indeed, its function was to provide for the wife

³³⁶ HL, Ä 4, 304; Bj. 27, 465; UL, G 5, 65; VmL, Ä 4, 45; Petersson, *Morgongåvoinstitutet*, 33–41, 65–87. Cf. Statute of Tälje, 17.7.1345, *DS V*, doc. 3972, 478–479; MEL, G 10, 10:2, 43; KtL, G 10, 10:2, 47. For Continental restrictions of morning gifts, dowries and counter-gifts, see Klapisch-Zuber, *Women, Family and Ritual*, 243–244; Carlsson, *Jag giver dig min dotter*, I, 219–220.

³³⁷ MESL, G 9, 42; SL 1387, G 9, 19; Petersson, *Morgongåvoinstitutet*, 73–74; Ylikangas, *Valta ja väkivalta*, 89–96.

³³⁸ Hadorph 1687, 69; Petersson, *Morgongåvoinstitutet*, 81–84. On the dating on the statute, see Bjarne Larsson, *Stadgelagstiftning*, 95.

³³⁹ Johan Skyttes kommentar 1608, G, Ca 9.2, 28.

in widowhood.³⁴⁰ If the marriage of the couple was later dissolved, the woman was probably allowed to keep her morning gift.³⁴¹ Nevertheless, some regions might have preserved some notions of the gift as a reward for virginity (*pretium virginitatis*): in sixteenth-century Augsburg remarried widows were given no morning gifts by their new husbands.³⁴² While medieval Welsh law did not know the Germanic morning gift, it had a corresponding institution. The *cowyll*, veil or head-covering, was the gift (scaled by the status of the wife and witnessed by the wedding guests) the husband promised his virgin wife before they had spent the night together and which was claimed by her the morning after.³⁴³

As discussed above, many property consequences relating to wedlock were linked to the first night the married couple spent together, either the bedding or the morning after.

The origins of the morning gift and bedding in Sweden were a subject of considerable debate some fifty years ago. The issue revolved around the question whether the institution had been introduced in medieval Sweden by the Catholic Church,³⁴⁴ or whether it was of Germanic origin and predated Christianity.³⁴⁵ There is no evidence to support the view that the gift was originally given on another occasion, such as the bedding itself, and that it was later given on the following morning because of the influence of the Church.³⁴⁶ Although I consider it unlikely that the morning gift was a product of ecclesiastical influence and thus originally an alien legal transplant in Sweden, it is possible that it, alongside with the blessing of the nuptial bed, gained some additional spiritual symbolism through the Church's dogma.³⁴⁷

³⁴⁰ Petersson, *Morgongåvoinstitutet*, 59; Ylikangas, *Valta ja väkiwalla*, 78–89; Carlsson, *Jag giver dig min dotter*, I, 216–217, 220–222; Pylkkänen, “Avioliiton historiaa,” 84; Hemmer, *Suomen oikeushistorian oppikirja* II, 39–40; Freisen, *Geschichte*, 112.

³⁴¹ VgL II, G 2, 282; VgL III, 67, 406.

³⁴² Roper, “Going to Church,” 89. See also Carlsson, *Jag giver dig min dotter*, I, 220–222.

³⁴³ Owen, “Shame and Reparation,” 49; Jenkins, “Property Interest,” 72, 76–78, 196.

³⁴⁴ Hemmer, “Om bilägrer,” 330, 338–340.

³⁴⁵ Carlsson, *Jag giver dig min dotter*, I, 209–210.

³⁴⁶ Cf. Pylkkänen, “Avioliiton historiaa,” 83.

³⁴⁷ Cf. Arnórsdóttir, “Marriage,” 187.

1.5 *Summary*

In medieval Sweden, marriage formation was perceived as a process consisting of several legal acts: betrothal, the giving away of the bride, the arrival of the couple at the wedding house and the public bedding of the bride and groom. The various legal acts were not only related to the property aspects of marriage, unregulated by the Church. Naturally, material goods played an important role in marriage formation, but the legal stages cannot be reduced to acts involving ownership of lands and chattels alone. The Swedish marriage process seems to represent a genuinely grey and liminal zone between the consent of the bride's marriage guardian and the couple's passing their first night together. During this interval, the couple was for some purposes considered married, but unmarried for others. Legal significance in the form of duties and/or rights was attached to all the stages of the marriage process: betrothal, wedding, the couple's arriving to the wedding house and bedding.

According to anthropologists, the control of the older generation over marriage is most pronounced 'in those societies in which substantial wealth is transferred at the time of marriage'.³⁴⁸ This also applies to medieval Sweden. Although some provincial laws had given married female relatives the right to act as marriage guardians in default of closer male relatives, this possibility disappeared in the royal laws. The same applied to the capacity of a widow to choose for herself, without the involvement of a marriage guardian. While she was explicitly awarded the right to choose for herself in some provincial laws, the later mid-fourteenth-century law of the Realm authorized her son to act as her *giftoman* in default of closer relatives. This is presumably an indication of strengthened paternalism as a counter-reaction to ecclesiastical influences in the form of increased individualism and an emphasis on the consent of the principals in marriage formations (see also the discussion in Chapter 3.2). In Sweden a son, on the other hand, could act on his own behalf after obtaining majority, while a single woman remained in the guardianship of her closest male relative until she married or died.

The Swedish betrothal was a formal act involving the groom, the woman's marriage guardian and their kinsmen. Originally the woman's

³⁴⁸ Murphy, *Cultural and Social Anthropology*, 87.

presence at the ceremony was unnecessary in Swedish law, while the attendance of the kinsmen of both parties was important, both as an expression of their consent and as witnesses to the contract. The ritual expressed agreement on the main exchanges of property: the bride's dowry or inheritance lot from her guardian and her morning gift from her groom as part of her upkeep in widowhood. Although both of these transactions materialized later after the wedding, they were agreed upon at the betrothal. In addition, at the betrothal the groom gave some 'friend gifts', possibly the rudiments of bride price, to the woman's kinsmen.

The wedding involved the giving away of the woman to the groom by her legal guardian. This ritual was followed by the wedding procession that brought the bride to the wedding house. This rite of passage was the most public and visible sign of the creation of the new marital couple. The bridal retinue was also adorned so as to attract attention. The wedding feast began with the arrival of the bride, groom and cavalcade at the wedding house. The evening involved excessive eating and drinking until at some point the bridal couple was publicly led into the nuptial chamber. The ritual of bedding was a very concrete and public legal act, and it originally had legal content, which came to fade somewhat in the course of the Middle Ages. As with so many other traditions, although the custom had become devoid of deeper meaning and function, it persisted from sheer force of habit when the social context remained the same.

Apart from the dowry the woman brought into the union, the morning gift, given by the husband to his wife usually on the morning after the wedding night, was a major part of the marital property transfers in medieval Sweden. The custom was of Germanic origin, although the Church's dogma on the consummation of marriage (further discussed below in Chapter 2.4) may have given some extra significance to the ritual once the Church became established. Nevertheless, the morning gift was not linked to actual consummation: sleeping together in the same bed sufficed. Bedding did not require physical intercourse; it only symbolically implied it.

The Swedish marriage process involved several legal acts. The rights and duties of the future spouses and the property consequences of marriage evolved tandem with these stages. When the customary marriage formation was put down in the provincial laws, partly at the Church's instigation, this gave the traditional and customary making of marriage institutional support and the stability of the written law. It remained

separate from ecclesiastical solemnization. Even if the ‘ecclesiastical model’ of contracting marriage, using Georges Duby’s term, made progress all through the Middle Ages, it did not replace the secular law, nor did it reduce its importance even when mingling with it.³⁴⁹

³⁴⁹ See also Arnórsdóttir, “Two Models of Marriage?,” esp. 79, 84–90.

CHAPTER TWO

THE ACT: THE MAKING OF MARRIAGE IN MEDIEVAL CANON LAW

2.1 *Matrimony, Sacramentality and Ecclesiastical Jurisdiction: Defining and Supervising Marriage*

The Gregorian Revolution and the Developing Legal Machinery of the Church

The so-called Gregorian reform wave, attacking secular influence on the appointment of Church officials, clerical marriage (nicolaitism) and simony, swept through the Church in the eleventh century. Upon the election of Leo IX (r. 1049–1054) as pope, the reform movement came under his leadership. But the reformist monk Hildebrand has been identified as one of the driving forces behind and the figurehead of this movement, which he, as Pope Gregory VII (r. 1073–1085), came to lead from the Apostolic See. In his *Dictatus Papae* of 1075, Gregory declared the political and legal supremacy of the papacy over the entire Church, the ultimate supremacy of the pope in secular matters, and the Church's independence from secular control.¹

This immediately caused the famous dispute between Gregory and Emperor Henry IV (r. 1056–1105), resulting in January in 1077 in the latter's penitential trip to Canossa for absolution and lifting of the excommunication. The issue of the so-called Investiture Controversy was whether kings could invest new bishops with the crosier, symbolizing pastoral care, and the ring, symbolizing the marriage of Christ and his bride, the Church. This investiture the Church considered a holy rite that laymen could not confer. The struggle continued with ensuing hostilities, finally resulting in the deposition of Gregory and the sack of Rome in 1084. A partial resolution of the Investiture Controversy was achieved in 1122 through the Concordat of Worms, a compromise on both sides.² Another vein of the same dispute over the ecclesiastical

¹ Blumenthal, *The Investiture Controversy*, 64–65, 70–75, 113–119; Brundage, *Medieval Canon Law*, 34–36, 39–40; Berman, *Law and Revolution*, 94–97.

² Blumenthal, *The Investiture Controversy*, 35–36, 42–45, 119–127, 165, 170–173; Berman, *Law and Revolution*, 94–99.

liberties went on in England, finally ending in the Church's victory in 1172.³ The Church was thus engaged in a war on two fronts: it had to purify itself from oppositional elements as well as simony and clerical marriage, and it had to free itself from the lead of secular rulers. As a result the Church was in internal uproar, and clashes between the papacy (and its local representatives) and the secular rulers were characteristic of this period.⁴

The victory of the 'Papal Revolution' on both fronts was an impressive achievement probably altering the course of the history of medieval Europe. A well-governed, hierarchical, independent and powerful Church emerged. By rights it has been called the 'first modern Western state'. Established by God and headed by the pope as 'judge ordinary of all persons' and supreme legislator, the papal court became the 'court of the whole Christendom', all Christians being subjected to its jurisdiction. The papacy of Leo IX had brought together both Italian and Lotharingian reformers acquainted with canon law. The papal court interpreted, applied and enforced laws and decisions through its judicial and hierarchical administrative system.⁵ Although a legal order had existed from the Church's earliest stages, canon law as 'the first modern Western legal system' was created from between 1050 and 1200.⁶ One of the major preconditions of the birth of classical canon law was the university system, the oldest university being that of Bologna established around the recently 'rediscovered' Justinian laws.⁷

The reformists needed to achieve several tactical objectives in order to realize their goals. New collections of old laws and canons had to be compiled in order to justify their policy in the Church's tradition. Gaps had to be filled in by new law. Law enforcement needed to be improved by the more effective detection of offenders, ecclesiastical courts and the development of a system of prosecution.⁸ The development of the

³ Berman, *Law and Revolution*, 255–269.

⁴ On the efforts to enforce clerical celibacy and the opposition, see Brundage, *Law, Sex, and Christian Society*, 214–223, 314–318, 401–405.

⁵ F. W. Maitland, quoted in Brundage, *Medieval Canon Law*, 187–188, has referred to the medieval Catholic Church as a state, and Berman (*Law and Revolution*, 99, 113–119) has developed the notion further. See also Blumenthal, *The Investiture Controversy*, 70–73; Brundage, *Medieval Canon Law*, 3, 96, 175.

⁶ Berman, *Law and Revolution*, 199–215; Bellomo, *The Common Legal Past of Europe*, esp. 58–65, 112–125; Ullmann, *Law and Politics*, 244–251.

⁷ Bellomo, *The Common Legal Past of Europe*, 58–60, 112–113; but cf. Winroth, *The Making*, 156–174, 195–196. See also Berman, *Law and Revolution*, 120–164.

⁸ Brundage, *Medieval Canon Law*, 37–43.

law and legal studies led to the birth of the legal profession as the disciplines of law and theology started to drift apart. The professionalization of the canonists had begun by 1200, and ever since the mid-twelfth century ‘proto-professional’ canon lawyers had pursued their trade. At this point canon law had not yet become a life-long career but rather represented a stage of life.⁹

The Church’s jurisdictional claims were extensive and wide in practice although the jurisdictional boundaries between ecclesiastical and secular courts were to some extent fluid, subject to regional and temporal variation. Yet the Church claimed—usually successfully—jurisdiction over all crimes committed by clerics, sexual crimes, crimes against the faith (blasphemy, heresy), matrimonial causes and legitimacy, usury, sabbath violations, tithes, wills and testaments.¹⁰ As far as matrimonial causes were concerned, the later-medieval challenge was not jurisdictional competition between secular and ecclesiastical courts. Rather, ‘[t]he problem was to ensure that ordinary marriage disputes went to any court at all. The real hurdle was the persistent idea that people could regulate marriages for themselves. The disappearance of this notion occurred gradually, over a very long period of time’. This lasting perception was due to the fact that previously, marriage and marriage formation had been considered private matters largely regulated by custom rather than dominated by the stricter normative system of the Church and controlled by its courts.¹¹

Matrimony as a Church-Regulated Sacrament

Classical canon law based its matrimonial dogma on ancient foundations: the solid base of matrimony had been laid by the late Antiquity. St. Augustine (354–430), perhaps the West’s greatest theorist of marriage, had created a doctrine of the three Christian goods of marriage (*bona matrimonii*): faith, children and sacrament (or symbolical stability). The ecclesiastical doctrine of marriage came to be built around these Augustinian goods of marriage, and for centuries theologians, canonists

⁹ Brundage, “The Rise of Professional Canonists,” esp. 30–37, 57–58; Brundage, *Medieval Canon Law*, 62–66.

¹⁰ Brundage, *Medieval Canon Law*, 70–97; Helmholz, *Roman canon law*, 6–11.

¹¹ Helmholz, *Marriage Litigation*, 4–5.



3. The marriage of Adam and Eve in paradise. Mural in the church of Inkoo (Ingå), Finland, painted in the 1510s. Photo by the author. In this marriage scene, God himself, taking the role of the priest performing the ceremony, joins Adam and Eve together.

and marriage sermons regularly dwelled on them and their necessity in human marriages.¹²

In classical canon law the good of faith (*fides*) signified that matrimony had to be monogamous and mutual sexual fidelity was required of both spouses. As St. Paul had defined marriage as a remedy for sin, the spouses had mutual sexual obligations towards each other, the so-called conjugal debt, to this end. The good of children (*proles*) implemented the divine creation. This commandment to beget children led to a ban on contraception of all kind. Any marriage contracted on the condition that the couple would not beget children was invalid because it was against the very essence of matrimony.¹³ Sterility (*sterilitas, impotentia generandi*) in one spouse was not a valid reason for dissolving a marriage—after all, having children was in the hands of God. Incapacity of having intercourse (*impotentia coeundi*) was another thing altogether. Although, as will be discussed below, the couple need never consummate their union by physical intercourse in order to create a valid conjugal bond between each other, they had to be capable of doing so. Consequently, antecedent impotence was an impediment to marriage, while subsequent impotence in either spouse did not threaten the bond, and the couple had to continue to live together like brother and sister.

The third good, the sacrament (*sacramentum*) or symbolic stability, meant that marriage was irrevocable once validly made: what God had joined together, no man could put asunder. While not all marriages were blessed with children, faith and sacrament were to be universal. Especially sacramental indissolubility became an absolute.¹⁴ A validly contracted marriage between parties between whom no impediment existed could not, as a rule, be broken.¹⁵ Divorce in the modern sense was—and is—unknown in the Catholic Church, while separation from bed and board (*divortium a mensa et thoro*) left the conjugal bond intact, thus precluding remarriage. If a dirimental impediment existed between the spouses the union could be annulled because a sacramental bond

¹² E.g. On the Sacraments of Hugh of Saint Victor, 2.11.7, 339–342; *Medieval Marriage Sermons*, 110–111, 156–157, 252–259, 302–305, 312–313; Reinhardt, *Die Ehelehre*, 50–69.

¹³ Clark, “‘Adam’s Only Companion’,” 16, 19, 25; Noonan, *Contraception*, 126–131; Reynolds, *Marriage*, 259, 274–311, 414.

¹⁴ Noonan, *Contraception*, 127–129.

¹⁵ In classical canon law, the only general exception was if either spouse entered a monastery within three months of the wedding, but before consummation. In such a case the remaining spouse could licitly remarry, X 3.32.2.

had never been formed and the union was dissoluble. The meaning of the word sacrament (in Greek *mysterion*), mentioned in Paul's letter to the Ephesians (Eph. 5.32), had been confused in the early medieval Latin, where it had come to mean any holy vow which God was called upon to witness (such as a marriage vow), a blessing of different objects (such as the nuptial bed) and a sacred sign or symbol.¹⁶ In the early twelfth century a new meaning was emerging: the sacrament was not only the sign, but also the vehicle or channel of efficient grace. Theologians separated the sacrament of matrimony from the carnal union and spiritualizing the 'channel of grace' or 'instrument of charity'.¹⁷

Before the twelfth century the Catholic Church did not have a clear and unified doctrine on the Christian sacraments, as the number of the sacraments and the holy rites classified as sacraments varied from one theologian to another. For example, Peter Damian (1007–1072) had counted twelve sacraments, one of which was matrimony, and in the early twelfth century the school of Laon had not yet developed a general concept of sacrament. The matter was settled in Peter Lombard's (ca. 1095–1160) *Sententiae libri quatuor*, the standard textbook on theology, written 1155–1158, in which the seven sacraments of matrimony, baptism, ordination, penance, extreme unction, communion and confirmation were enshrined.¹⁸ Matrimony was thus not only confirmed to be one of the holy rites of the Church, but the oldest of all the sacraments, instituted in paradise while the others were based on the New Covenant. Some theologians even considered matrimony as one of the main sacraments because of this.¹⁹

The sacramental nature of marriage was reinforced by comparing it to the union of Christ and his Church as well as to the faithful soul's union with Christ: both bonds were indissoluble. Yet human marriage was considered a lesser sacrament and the Christ's union with his Church a great sacrament.²⁰ When matrimony was included among the seven sacraments, the Church received an additional means of justifying

¹⁶ Reynolds, *Marriage*, xxv–xxvi, 165, 280–283; Duby, *The Knight, the Lady and the Priest*, 178–179. See also Stock, *The Implications of Literacy*, 254–258, 261–262.

¹⁷ Duby, *The Knight, the Lady and the Priest*, 178–179.

¹⁸ Lea, *A History I*, 136; Duby, *The Knight, the Lady and the Priest*, 177–181; Reinhardt, *Die Ehelehre*, 57. For the dating of the *Sententiae*, Winroth, *The Making*, 142.

¹⁹ Duby, *The Knight, the Lady and the Priest*, 179–181, 207; Reinhardt, *Die Ehelehre*, 41–43, 55.

²⁰ *Medieval Marriage Sermons*, 156–157, 212–215; Reynolds, *Marriage*, 288–293, 299–302; Rousseau, "The Spousal Relationship," 93.

its jurisdiction over marriage. The Church legislated and adjudicated on the administering of the sacraments in the external forum of the ecclesiastical courts. In addition, as many marriage-related matters concerned the welfare and salvation of the soul, the clergy provided pastoral advice and instructions in the internal forum (*cura animarum*).

Marriage formation had mainly been in secular hands in the earlier Middle Ages. The period was particularly rife with adultery, repudiations and incestuous marriages. To the great disapproval of clerics, the Merovingian kings were notorious in this regard. In the early Middle Ages, the Church had concentrated its efforts on emphasizing the indissolubility of the marriage bond and fighting incest. During this period, the clerics developed the notions of the forbidden degrees of consanguinity and affinity until the seventh degree using the Germanic computation.²¹ The situation was altered somewhat by the accession of the Carolingians. The new usurper dynasty had to obtain the support of the Church and justification to its claims of control over the aristocracy. The Carolingians consequently acted as patrons to the ecclesiastical attempts at reform and provided the clerics with much-needed power of enforcement. Moreover, apart from the ecclesiastical sanctions, the incestuous were threatened by secular penalties, such as outlawry and forfeiture of property. This duality, however, permitted also secular judges to act. In attempting to enforce indissolubility even in a very narrowly defined sense, the eighth-century ecclesiastical councils tried to limit the grounds on which a wife could be repudiated. Yet, aristocratic adultery and concubinage continued as openly as before.²²

The efforts of King Lothar II of Lotharingia (r. 855–869) to divorce his childless queen Theutberga and marry his concubine foreshadowed the policy of the papacy during the High Middle Ages. Lothar's divorce campaign went on from 858 to 869, ultimately ending in papal victory.²³ Because of the lack of one single authority for directing and enforcing the development of the doctrine, monogamy, indissolubility and the

²¹ Wemple, *Women in the Frankish Society*, 36–40, 75–96; Gaudemet, *Sociétés et mariage*, 368–370; Sheehan, *Marriage, Family and Law*, 304–306; Daudet, *Études sur l'histoire*, 34–45, 51–64; Esmyol, *Geliebte oder Ehefrau*, 44–61. See also Marriage among the Franks, in *Love, Marriage, and Family*, 332–335.

²² Daudet, *Études sur l'histoire*, esp. 24–31, 81–84, 152–161; Esmyol, *Geliebte oder Ehefrau*, 142–181; Wemple, *Women in the Frankish Society*, 75–96. See also Lupoi, *The Origins*, 277–282.

²³ Esmyol, *Geliebte oder Ehefrau*, 159–170; Daudet, *Études sur l'histoire*, 94–122, 141–150; Wemple, *Women in the Frankish Society*, 84–86.

impediments of consanguinity and affinity remained ineffectively monitored in this period. Even experts on canon law were hardly unanimous about the doctrine itself. Although bishops could be the preferred judges of matrimonial disputes, as long as they did not have coercive power apart from the occasional help of the secular arm, they lacked one of the necessities of the exertion of power. Both the ecclesiastical and secular authorities went into decline only to rise again in the eleventh century.²⁴ Despite this, at least from the ninth century on, the Church's consanguinity and affinity rules influenced the behaviour of the elite so that they started to avoid too overtly incestuous marriages and accept members of 'new' and unrelated families as spouses.²⁵

At this point, marriage formation was hardly a key issue for the Church, and it was largely happy to support or at least tolerate local customary marriage formalities. Despite a certain willingness, for example in ninth-century France, to regulate marriage formation, in practice the marriage rituals were secular. Archbishop Hincmar of Reims's (806–882) notions of marriage formation, for instance, combined both post-classical Roman and Germanic features. According to Hincmar, the betrothal (*desponsatio*), an agreement between two families in which the woman was given to her husband by her father, was one of the crucial formalities of marriage. The husband had to endow her with a dowry. The nuptials, which were to be publicly celebrated, culminated in the bedding of the couple, when the marriage couple completed their union through consummation and the mingling of the sexes (*commixtio sexuum*).²⁶ In fact, because of the merrymaking and whirl of the weddings, some purists even forbade priests to assist at weddings.²⁷

Yet, there was some willingness within the Church to expand the ecclesiastical role in marriage formation. For example, the authors of the forged False Decretals incorporated papal decretals on nuptial blessing, supposedly issued by Pope Callixtus and Pope Evaristus.²⁸ Bouchard of Worms (d. 1025) supported the publicity of marriage, although the ritual of the nuptial blessing was not very firmly on the agenda at that time, as the Church had prioritized other issues.²⁹ Ecclesiastical

²⁴ Daudet, *Études sur l'histoire*, 10–13; Wemple, *Women in the Frankish Society*, 87–88. For the High Middle Ages, see also Bouchard, "Consanguinity and Noble Marriages."

²⁵ Bouchard, "Those of My Blood," 36–37, 40–44.

²⁶ Reynolds, *Marriage*, 353–361; Duby, *The Knight, the Lady and the Priest*, 32–35.

²⁷ Duby, *The Knight, the Lady and the Priest*, 34.

²⁸ Reynolds, *Marriage*, 406–412; Duby, *The Knight, the Lady and the Priest*, 34–35.

²⁹ Duby, *The Knight, the Lady and the Priest*, 71–72.

assistance and control of the engagement and wedding proper were on the increase, however. Some councils went as far as to insist on a priestly blessing for the validity of a marriage.³⁰ Another step towards the 'Christianization' of the wedding ceremonies was taken in the development of nuptial liturgies. By the eleventh and twelfth century complete liturgies for marriage—from the exchange of promises to the blessing of the nuptial mass—had been introduced, with some regional variations.³¹

In late medieval France, these regional differences were telling. The two main French regions each had its distinct liturgical nuptial traditions. The northern tradition (mainly in north-western and western France) was legal and took place outside the church door. The location indicated that the Church's participation was only formal and limited. The ritual first focused on the mutual consent of the spouses (a legal precaution), and the priest acted as a 'man of law', an intermediary between the principal parties and guarantor of the legality of the union. The ring³² and coins symbolized the dowry, separate from the question of consent. The southern model (from central to north-eastern France) was sacramental, and the ceremony took place in the interior of the church. This location signified that the Church wanted to sacralize the rite of passage and absorb it completely into religious life. The ritual began with gestures of union and formulas of mutual giving and love, symbolized by the ring. Only then did the ritual turn to the consent of the parties. The priest's role resembled more paternal authority than legal control.³³

The process of the sacralization of marriage formation was slow. '[F]or the laity, marriage remained a secular matter. They thought it a good thing for the priest to come and say some prayers over the marriage bed, as he did in the fields to bring rain, and over swords and hounds to make them effective. But otherwise laymen preferred to keep the clergy at a distance.'³⁴ If this is true of countries like France, it should not be surprising that the marriage customs of the peripheries

³⁰ Sheehan, *Marriage, Family and Law*, 135.

³¹ Brooke, *The Medieval Idea*, 56, 58; Duby, *The Knight, the Lady and the Priest*, 150–153, 258–259.

³² On the ring in Roman and medieval marriage, see Treggiari, *Roman Marriage*, 148–149; Köstler, "Ringwechsel," 3.

³³ Molin – Mutembe, *Le rituel*, esp. 34–45, 64–67; Burguière, "Le rituel du mariage," 639–640.

³⁴ Duby, *The Knight, the Lady and the Priest*, 153.

of Europe took some time to be Christianized. What Duby has called the ‘ecclesiastical model of marriage’ was founded on some main principles. While virginity was highly lauded, matrimony was tolerated as a remedy to venal sin, and the goal was not only to channel carnal passions but also curb them. All extra-marital sexual activities were forbidden and punishable in ecclesiastical courts. Marital intercourse was ideally meant only for procreation, and any pleasure felt during it was sinful. The Church had also established many prohibitions regarding the time, mode and place of conjugal embraces. Matrimony was to be monogamous, indissoluble and exogamous. Sexual activities and matrimony, based on free consent, came under the exclusive jurisdiction of the Church.³⁵

The growing ecclesiastical control of matrimony came to provoke controversies in the two centuries following the Papal Revolution. Princes and nobility had quite different aims for marriage, and their notions, the ‘lay model’, were ‘almost entirely alien to’ the ecclesiastical model. Matrimony was one of the means through which landed inheritance especially, but more generally property, status, reputation and honour of the house or lineage were preserved or enhanced from one generation to the next. All this necessitated careful negotiations and thorough planning of the matrimonial strategy well in advance of the marriage itself. Because partible inheritance was apt to splinter the patrimony, a tendency toward endogamy and marrying relatives helped to prevent the patrimony from fragmentation. The marriage of sons was regulated in accordance with the principles of primogeniture. All conjugal bonds had to be dissoluble in order to advance the interests of the family if a better matrimonial catch was available or the lineage was threatened by a lack of heirs. Women had to be virtuous and virginal at marriage to ensure the legitimacy of issue, while male sexuality was by no means restricted by marriage.³⁶

The clash between Bishop Ivo of Chartres (*ca.* 1040–1115~6) and King Philip I of France (r. 1060–1108) over Philip’s repudiation of his wife Bertha and his bigamous marriage to Bertrada of Montfort lasted for many years (1092–1104). The case ended with the nominal victory of

³⁵ Duby, *Love and Marriage*, 10–11; Brundage, *Law, Sex, and Christian Society*, 183.

³⁶ Duby, *Love and Marriage*, 7–10; Brundage, “Matrimonial Politics,” 281–282. See, however, the reservations of Bouchard (“*Those of My Blood*,” viii).

the Church.³⁷ The uncanonical marital behaviour of French noblemen were also reprimanded. This could lead to excommunication by the bishop, to which the enraged aristocrat responded with maltreating and imprisoning the cleric. Noble marriages were also annulled because of the impediment of consanguinity was conveniently discovered.³⁸ Even the French kings continued their practices. The next huge scandal was caused by Philip II August of France (r. 1180–1223), who wished to rid himself of his second wife, Princess Ingeborg of Denmark. Justifying the repudiation by consanguinity, he married Agnes of Meranie. This dispute dragged on for twenty years (1193–1213) and ended in a compromise: after Agnes's death her children were legitimated by Pope Innocent III, while Ingeborg was reinstated as queen.³⁹ From the late tenth to the early thirteenth century, the track record of the French kings in first using repudiations and later canonical marriage law as a means of guaranteeing the succession to the throne was in a league of its own.⁴⁰

The Church's dogma on consanguinity and affinity, classified by Bruguière as 'a perfect example of juridical logic run mad', enabled this although nobles increasingly attempting to avoid at least blatantly incestuous marriages.⁴¹ As early as in the eleventh century, royal families were having insurmountable difficulties in finding spouses of equal rank who were not within the prohibited degrees and the aristocracy soon faced the same situation. In fact, no French king was able to contract a valid marriage between 987 and 1215 because of consanguinity and affinity although all of these were not contested by the Church because of ignorance or interests of peace. By contrast, because of public scandal and political reasons, the legitimacy of other unions in

³⁷ Duby, *The Knight, the Lady and the Priest*, 3–18; Bruguière, "Canon law and royal weddings," 482–484, 495–496; Brooke, *The Medieval Idea*, 122–123; Landau, "Ehetrennung," 154–157; Blumenthal, *The Investiture Controversy*, 163, 166.

³⁸ Dalarun, *Robert of Arbrissel*, 18–19, 67–72, 77, 94–96.

³⁹ Rousseau, "The Spousal Relationship," 95–96, 107; Bruguière, "Canon law and royal weddings," 488–491, 496; Brooke, *The Medieval Idea*, 123–124; Duby, *The Knight, the Lady and the Priest*, 204–206.

⁴⁰ See, e.g. Duby, *The Knight, the Lady and the Priest*, 77–85, 189–196; Landau, "Ehetrennung," 154–161.

⁴¹ Bruguière, "Canon law and royal weddings," 475. See also Bouchard, "Consanguinity and Noble Marriages".

similar degrees was never doubted.⁴² The late-twelfth century Parisian theologians, headed by Peter the Chanter (d. 1197), also attacked canon law on this point for making a travesty of indissolubility. The mounting criticism led to a curtailing of the impediments by the 1215 Lateran Council.⁴³

By the thirteenth century the supreme jurisdiction of the Church in matrimonial causes had largely been accepted in Continental Europe.⁴⁴ For example, the German *Sachsenspiegel* of 1235 acknowledged that a ban could be put upon the anointed emperor only for three reasons: wavering in the true faith, destroying churches or repudiating his lawful wife.⁴⁵ Even those princes who chose to persist in their uncanonical marriages accepted ecclesiastical jurisdiction, but provided evidence to support the validity of their claims. France was not unique in this, as the princes of the Iberian Peninsula were not loath to initiate lengthy battles concerning the validity of their marriages. The repudiation of Peter II of Aragon of his wife Marie of Montpellier in 1205 after a year of married life in order to marry the daughter of the king of Jerusalem was based on allegations of a prior contract, affinity and consanguinity.⁴⁶ Such legal battles with a strong political stamp regarding the validity of marriage appeared also on an aristocratic level. These cases could be as protracted as royal marriage disputes, although the papal role as supreme judge was no longer denied.⁴⁷ Princes and the nobility were the first stratum of society facing the new standards of marriage; but the 'Christianized' notions of marriage formation were gradually filtered downwards into the lesser nobility, town-dwellers and peasants.⁴⁸

⁴² Bouchard, "Consanguinity and Noble Marriages", 278–279, 286–287; Bruguère, "Canon law and royal weddings," esp. 492; Bouchard, "Those of My Blood," 44–58.

⁴³ Baldwin, "Critics of the Legal Profession," esp. 254–259.

⁴⁴ See also Harrington, *Reordering marriage*, 107–116.

⁴⁵ *The Saxon Mirror*, III:57, 130.

⁴⁶ Rousseau, "The Spousal Relationship," 94–95.

⁴⁷ E.g. Brundage, "Matrimonial Politics," 273–275.

⁴⁸ See also Brooke, "Marriage and Society," 22–28. Cf. Duby, *The Knight, the Lady and the Priest*, 48.

2.2 *The Church's Policy of Consent: Guaranteeing Individual Choice*

The Origins and Development of the Consent Theory in the Twelfth Century

The Gregorian revolution resulted in the formation of the unequalled machinery of the 'first modern state'. Although the secular rulers struggled to retain the rights of investiture and supremacy over local churches in their hands, these controversies were mostly over by the late twelfth century. Matrimony had been defined as one of the seven sacraments. Although this helped the ecclesiastical courts to claim jurisdiction over all matrimonial causes, jurisdiction was only one side of the coin: the other was the right to legislate and define the preconditions and forms of marriage formation and the contents of the conjugal union. The clerics and theologians—later in the course of the twelfth century also the canonists—quickly turned their attention to the hitherto rather neglected topic of marriage formation.

Earlier in the Middle Ages, the Church had linked its view of a valid and legitimately contracted marriage with the observance of secular marriage customs and rites. Later, however, the Church sought more actively to define the necessary aspects of the making of marriage. Here the paths of the Church and the secular society forked. The Papal Revolution and the establishing of the Church's exclusive jurisdiction over the sacrament of matrimony intensified the need to create an exhaustive and complete legal doctrine of marriage formation. As Berman has put it, the imprecision and incoherence of canonical marriage norms on marriage and family were only possible because of their hortatory nature. Bindingness required exactness.⁴⁹ The notion of consent was to become the essence of canonical marriage formation.

The legacy of the Roman Empire to the early Church had been considerable. Christians married just like other Romans as the early Church basically respected the local customs of marriage formation.⁵⁰ The classical Roman law of marriage influenced the canonical doctrine. Roman lawyers provided the Church with authoritative phrases, known and cited already by the Church Fathers, such as 'Consent alone suffices in making a betrothal' (*Sufficit nudus consensus ad constituenda sponsalia*) and 'Not intercourse but consent makes marriage' (*Nuptiae enim*

⁴⁹ Berman, *Law and Revolution*, 227.

⁵⁰ Reynolds, *Marriage*, 121.

non concubitus, sed consensus facit).⁵¹ Nevertheless, many legal notions, for example most notably the significance of consent and marital affection, obtained different content in canon law in comparison with their classical Roman origin.

In Roman law, consent had a meaning different from that of classical canon law. Firstly, in Roman law if the principals were under the guardianship (*patria potestas*) of a tutor or of their *paterfamilias*, both the principals and their *patresfamilias*—or alternatively their tutor—had to consent to the marriage. Paternal consent was presumed, though, unless clearly refused. In practice, daughters were only allowed to dissent with the choice of their *patresfamilias* if proposed grooms were morally disreputable. Female consent was deduced from her tacit participation. A son under paternal power was not to be compelled to marry, but if force had nevertheless been used, the union was considered valid. Only children who were *sui juris*, legally major and free from guardianship, could contract marriage without regard to the opinion of their relatives.⁵² However, if the *paterfamilias* or guardians abused their authority by wrongfully preventing their offspring or wards from marrying, the proconsuls or provincial governors could make them arrange a union or endow the child.⁵³ The role of the daughter or woman was passive at the betrothal: she, unlike the groom, was promised (*sponsa*).⁵⁴ In addition, it had been argued that Roman marriage only became truly consensual in the late Empire. The role of parental consent was transformed from a manifestation of paternal *potestas* to protecting the children from unconsidered marriages. Moreover, at that time, the Christian Fathers were not advocates of purely consensual marriage.⁵⁵

Another difference between canon and Roman consensualism lay in the understanding of the significance of consent. In Roman law the marital consent had to be continuous for the marriage to last. When either spouse no longer wished to remain in the marriage, they were divorced. Earlier, the *paterfamilias* had had a similar power to break his daughter's betrothal or marriage at will (or to prevent divorce), but later

⁵¹ Dig. 23.1.4, Dig. 35.1.15. See also Dig. 24.1.32.13.

⁵² Dig. 23.1. 7.1, Dig. 23.1.10–13, Dig. 23.2.2, Dig. 23.2.9–11, Dig. 23.2.16.1, Dig. 23.2.21–22, Dig. 23.2.25. Kupiszewski, “Studien zum Verlöbniß,” 75–81; Treggiari, *Roman Marriage*, 15–17, 146–147, 170–179; Evans-Grubbs, “Marrying,” 54–60; Reynolds, *Marriage*, 22–23. Cf. Weber, “Consensus facit nuptias!” 65–66.

⁵³ Dig. 23.2.19; Treggiari, *Roman Marriage*, 147.

⁵⁴ Gaudemet, *Sociétés et mariage*, 18–19.

⁵⁵ Gaudemet, *Sociétés et mariage*, 126–128, 344.

this right was restricted so that interference with happy marriages was forbidden.⁵⁶ Canon law, on the other hand, saw the role of consent as only being initial. The spouses had to consent in order to create a valid and indissoluble conjugal bond, but once created, the union was indissoluble no matter how the spouses came to regard each other at a later stage.

In Roman legal thought the concept of marital affection (*maritalis affectio*) was related to continuous consent and the will to remain married. In classical Roman law this meant the steadfast attitude of perceiving the spouse as a spouse, not a concubine or lover, and the will to remain married. This continuing *maritalis affectio*, an inward state of mind, was related to the Roman concept of ongoing consent as the basis of the existence of a valid marriage. Its outward sign was *honor matrimonii*, the dignity with which the husband treated his wife in public. How a third person was able to perceive the exact moment of this internal attitude was quite another matter. It could be especially obscure when a concubine had been transformed into a wife, for example.⁵⁷ In Justinian law *maritalis affectio* was employed in three major contexts: generally to establish matrimony, more specifically to discriminate between marriage and concubinage in determining whether gifts between the parties were valid or not, and to establish the inheritance rights of children. Nevertheless, in later Justinian Roman law the word *affectio* was getting an emotional connotation so that it began to also mean affection and fondness.⁵⁸ In classical canon law marital affection came mainly to be perceived as affection or a loving state of mind. It was transformed into a yardstick of the quality of the contracted marriage. After the marriage had been contracted, the spouses were required to treat each other with marital affection, including e.g. cohabitation, food, clothes, shelter, amicable relationship, and sexual intercourse, or be punished.⁵⁹

While Bourchard of Worms spoke only fleetingly of the consent of the parties, as the focus was on the assent of the two families at this

⁵⁶ E.g. Dig. 23.1.10, C. J. 5.17.5; Reynolds, *Marriage*, 24, 47; Treggiari, *Roman Marriage*, 155–156, 459–461.

⁵⁷ E.g. Dig. 24.1.32.13, Dig. 39.5.31, C. J. 5.17.11. Treggiari, *Roman Marriage*, 52–56; Evans-Grubbs, “Marrying,” 50–53; Brundage, *Law, Sex, and Christian Society*, 36–37, 41–42; Pedersen, *Marriage Disputes*, 156–157.

⁵⁸ Noonan, “Marital Affection,” 482–489.

⁵⁹ Noonan, “Marital Affection,” 500; Sheehan, *Marriage, Family and Law*, 269–276; Rousseau, “The Spousal Relationship,” 94–96, 104–109; Pedersen, *Marriage Disputes*, 157–175.

stage. Pope Nicholas I (858–867) had carried on the Roman tradition in his famous letter to the Bulgarians. Having described many of the customary rites of marriage, he denied that the rites themselves had any legal bindingness. The consent of the principals was the only necessary event of marriage, as many were too poor to afford any marriage formalities.⁶⁰

The interest of the canonists and theologians was to turn towards marriage formation in the first half of the twelfth century, and by the end of the century the main features of the new doctrine had been fixed. The principal centres of the doctrinal development were especially the law school of Bologna on the one hand, and the University of Paris and its theologians on the other hand. The latter came to have a paramount role in the development of the Church's dogma of marriage formation, as Peter Lombard's *Sentences*, fixing the number of sacraments at seven, became the standard textbook of theology. The influence of the Parisian school has been described as almost imposing 'a new religion on the foundations of the old faith'.⁶¹

In his work on the sacraments written around 1134, Hugh of Saint Victor (d. 1141) repudiated the view that carnal intercourse was necessary for the sacrament of marriage. On the contrary, he insisted that true sacramental marriage existed although the couple had never had sexual intercourse, but that in fact matrimony existed more truly and sacredly when there was 'nothing in it at which chastity may blush'.⁶² Marriage was created by the mutual consent of the parties to have each other thereafter as husband and wife. This free consent could be expressed in words, deeds or at least mutual understanding. The joining of the flesh contributed nothing to the marriage, indissoluble after the exchange of consent. Thus, an unconsummated union took preference over a subsequent consummated union. An oath of (future) marriage (*juramentum de futuro*) was another thing altogether. It did not make marriage immediately and could be dissolved by an ensuing marriage to another person, although the 'preceding lie' had to be atoned for by doing penance. As for the consent of parents, betrothal, endowment, priestly blessing or witnesses, without all of these there

⁶⁰ Duby, *The Knight, the Lady and the Priest*, 72; Sheehan, *Marriage, Family and Law*, 286, 288. See also Weber, "Consensus facit nuptias!," esp. 30–40. As for the views of the Ortholox Church, see Levin, *Sex and Society*, 95–99.

⁶¹ Lea, *A History* I, 136.

⁶² *On the Sacraments of Hugh of Saint Victor*, 2.11.3.

could be a legitimate marriage on the basis of the parties' own will and legitimate vows.⁶³

Peter Lombard considered that a marriage (*pactio conjugalis*) was valid, indissoluble and perfect after the couple had freely exchanged marital consent in the present tense. Parental consent, nuptial blessing and such formalities were unnecessary. If after such mutual consent one party exchanged consent with another person and had children with him/her, the second union was null. A betrothal (*desponsatio*) was an agreement of the man and woman to contract marriage (*compromissio viri et mulieris de contrahendo matrimonio*). Such fiancés (*sponsi*) could unilaterally vow continence or enter a monastery without prejudice to the other. Although future consent had been accompanied by an oath (*iuramentum*), it could be broken by exchanging present-tense consent with another person. In such a case, however, penance had to be done for perjury or mendacity.⁶⁴

Moreover, focusing on consent as the determining factor of marriage certainly safeguarded the Holy Family. The nature of the relationship of Mary and Joseph had been a question of debate at least since the fourth century. At that time, Jerome (*ca.* 340–420) had defended the non-sexual relationship by denying that Joseph and Mary had ever had sexual relations even after Jesus' birth; Jerome interpreted the brothers and sisters of Jesus as cousins. Both Joseph and Mary were virgins and Joseph behaved like Mary's protector, not like her husband.⁶⁵ Augustine accepted the notion of the perpetual virginity of Mary. As Joseph acted as a father to Jesus, he could also be called Mary's husband. Even if the spouses did not unite carnally or had ceased to have sexual relations, they were joined together in their hearts by the bond of conjugal faith and love. Intercourse of the mind, Augustine thought, was more intimate than that of the flesh. As the 'pledge of the affection of the soul' made matrimony, the marriage of Joseph and Mary contained all the goods of marriage.⁶⁶

As discussed above, Hugh of Saint Victor had no difficulties in declaring the chaste marriage of Mary and Joseph as valid. Before contracting with Joseph in spirit, Mary had wanted to lead a virginal

⁶³ *On the Sacraments of Hugh of Saint Victor*, 2.11.4–5; *Summa sententiarum* of Hugh Saint Victor, 7.6–7.

⁶⁴ *Sententiae in IV libris distinctae of Peter Lombard*, 4.27.9, 4.28.1, 4.29.1.

⁶⁵ Clark, "'Adam's Only Companion,'" 22–23.

⁶⁶ Reynolds, *Marriage*, 254–257; Clark, "'Adam's Only Companion,'" 23–25.

life but had made no prenuptial formal vow of continence. Afterwards, she thought she could remain a virgin if it pleased God. Hugh of Saint Victor considered also that a couple who, through a marriage agreement, had made each other both creditor and debtor but maintained fidelity as well as indissolubility could make a mutual vow of chastity without impairing the sacrament or the bond.⁶⁷ Peter Lombard refuted the view of ‘certain doctors’ who claimed that matrimony could not be contracted without intercourse and who consequently thought that between Mary and Joseph there either existed no matrimony or only an imperfect marriage. However, their union was both more holy and perfect without carnal acts as it contained all three Augustinian goods of marriage: children, faith and sacrament. Mary had consented to marital society, but as she had committed her virginity to the divine will, she had even consented to carnal copulation in order to obey the divine inspiration. Later both had decided to live in virginity. As their present-tense marriage consent sufficed for validity, the union of Joseph and Mary was undoubtedly above criticism. Even Joseph deserved to be called Jesus’ father, because of his faithful marriage and because he, the husband of Jesus’s mother, had been joined to her soul, not her flesh.⁶⁸

At the latest when the Parisian school developed its dogma, Gratian of Bologna, whose theory will be analysed in more detail in Chapter 2.4, presented a rival theory making consent and consummation the two necessary factors of marriage. For some decades his consummation theory, the Parisian consent theory and the Roman-law inspired school, emphasizing the transfer of the bride to the bridegroom’s house, criticized one another and contended for supremacy within the Church. By the end of the century, however, it was obvious that the Parisian notion had won the majority of all canonists over.⁶⁹ Especially the papacy of Alexander III (1159–1181) was decisive in clinching the policy of the Church, although it is possible that his notions of marriage formation went through several stages.⁷⁰ Papal decretals had decided

⁶⁷ *On the Sacraments of Hugh of Saint Victor*, 2.11.4, 329–330; Gold, “The Marriage of Mary and Joseph,” 107–110.

⁶⁸ *Sententiae in IV libris distinctae* of Peter Lombard, 4.26.6, 4.27.5, 4.30.2–3; Gold, “The Marriage of Mary and Joseph,” 110–113. See also Noonan, *Power to Dissolve*, 81, 84–85.

⁶⁹ E.g. Donahue, “Johannes Faventinus,” 180–193; Donahue, “Bassianus,” 183–184, 188–191.

⁷⁰ Donahue, “The Dating,” esp. 102–107.

the matter in practice and canonists followed suit. Even the famous glossators Azo (c. 1150–1230) and Accursius (c. 1182–1260) accepted the principle of the papal decretals making consent alone the decisive moment of marriage.⁷¹

Marriage Formation in Classical Canon Law: Concentrating on Consent

As discussed above, with the victory of the consent theory, the exchange of matrimonial consent became the sole decisive factor and instance in marriage formation as far as the Church was concerned. A prior present-tense exchange of marriage vows always took precedence over a posterior union even if the latter had been solemnized and consummated. This practice was also observed in ecclesiastical courts.⁷² Once the principals had exchanged mutual consent to marry each other, they had administered to each other, the sacrament of marriage and their union had become indissoluble although there were no witnesses or accompanying formalities. The capacity to consent was essential which is why a lunatic (*furiosus*) could not validly contract marriage.⁷³ As for minors between seven and twelve (girls) or fourteen (boys), they could be legally betrothed. While they were incapable to consent validly before reaching majority (*legitima aetas*) or puberty, they had to give their consent after reaching this age. Consummation of the union (*carnalis commixtio*) with a ‘mingling of the sexes’ (*commixtio sexuum*) even before this age, nevertheless, counted as consent. Mere attempts at intercourse did not.⁷⁴

More accurately, the mutual intention and consent of the parties to contract marriage had the pivotal role, but as ecclesiastical judges could only take external acts as expressions of the parties’ intentions into account, some external signs were necessary. Usually words of consent were necessary as proof for the Church.⁷⁵ The internal thoughts of the parties could not constitute the basis of a judgement in the ecclesiastical court, the *forum externum*, if the outward signs were in contrast with

⁷¹ Donahue, “The Case of the Man,” 28–34; Donahue, “Bassianus,” 191–195.

⁷² X 4.1.31; Helmholz, *Marriage Litigation*, 57–58.

⁷³ X 4.1.24.

⁷⁴ X 4.2.8, X 4.2.10. See also C. 30 q. 2 d. a. c. 1–c. 1; Walker, “Free consent,” 125–126; Phillips, *Medieval Maidens*, 24–30, 36–40. On the age of consent in classical Roman law, Treggiari, *Roman Marriage*, 39–43; Kupiszewski, “Studien zum Verlöbnis,” 95–96, 98.

⁷⁵ X 4.1.25.

these. In the *forum internum* of the confessional, between God and man, inner feelings and intentions were binding. However, if a man used ambiguous words in order to dupe a woman into believing he wished to marry her but, in fact, only in order to seduce her, canon law judged the marriage to be invalid, but not in the penitential internal forum.⁷⁶ But words were not an absolute formal requirement, as even the mute and deaf, unable to speak, were allowed to marry. Consent alone sufficed for marriage and the parties could express it by using signs instead of words (*quod verbis non potest signis valeat declarare*).⁷⁷

The free consent required by the doctrine could not rest on false premises regarding person or condition. Therefore, if one intended to marry Peter, but happened to contract with Paul instead, there could be no valid marriage: an error regarding the physical identity of the person (*error personae*) impeded consent. Another impeding error related to the condition (*error conditionis*) of the other contracting party was that the union could be annulled if one party was ignorant of the other's being a slave. Either party could also mistake the fortune (*error fortunae*) or the quality (*error qualitatis*) of the other, but such miscalculations did not normally justify an annulment.⁷⁸

It is well known that the classical canon law of marriage gave the consent of the parties a crucial role in the making of marriage, while the consent of the parents, though recommendable, was not a condition *sine qua non*. Naturally, one does not have to see here a conflicting dualism between the principal parties and their parents, kin, friends and masters. Researchers have justly reminded us that the 'individual versus family' perspective to marriage formation is too black-and-white. In every-day life, the interaction of the older and younger generation was influenced by cultural, strategical, practical and emotional considerations which intertwined and overlapped.⁷⁹ Parents, relatives or friends could also be disunited or dissenting, which is why their role should be discussed in a more nuanced way: different opinions, aims and strategies could be manifested in families, too.

⁷⁶ X 4.1.26. See also Helmholz, *Marriage Litigation*, 42–44.

⁷⁷ X 4.1.23.

⁷⁸ E.g. *On the Sacraments of Hugh of Saint Victor*, 2.11.18–19; *Sententiae in IV libris distinctae* of Peter Lombard, 4.30.1; *Summa decretorum* of Rufinus of Bologna to C. 29 q. 1, 459; Gaudemet, *Sociétés et mariage*, 320–321, 331–337; Sheehan, *Marriage, Family and Law*, 229–230.

⁷⁹ E.g. O'Hara, *Courtship and constraint*, 30–34; Frances, "Making Marriages," 40.

The emphasis on the consent of the parties was no exclusive hallmark of the Parisian school as even Gratian had considered free consent to be a prerequisite for valid matrimony. Later, Bernard of Pavia (d. 1213) expressly stated that paternal consent belonged to the solemnities that added to 'honesty' and were not necessary. There might be a moral obligation to acquire parental consent, but there definitely was no binding legal obligation to do so.⁸⁰ The Church's dogma, requiring nothing but mutual consent alone, was a novelty. In fact, it was not part of the tradition of the early Church, and parental consent had been a prerequisite of valid marriage both in Roman and Germanic law. However, in the post-Gregorian Church, marriage was starting to be reckoned among the sacraments, and the consent of the contracting parties themselves consequently became the essential element.⁸¹ The focus on consent also made sexual intercourse and physical consummation of the marriage more or less redundant. Even if popular marriage doctrine considered procreation to be essential, the ecclesiastical dogma disregarded it, considering chaste marriages valid. Some modern commentators have thought that the notion 'humanized' the medieval concept of matrimony by putting 'a firm check on the notion of marriage as simply a baby machine'.⁸²

The Church's marriage doctrine was riddled with the double character of the sacrament of matrimony. On the one hand, two people freely administered the sacrament to one another before God, emphasizing internal intention and matrimonial consent. On the other hand, sacramental matrimony was a legal transaction, requiring institutional control and evidence, within the Church's judicial system.⁸³ The medieval Church was incapable of fully resolving this inconsistency.

In order for consent to constitute valid matrimony it had to be freely given; coerced consent was invalid.⁸⁴ The Church, however, insisted that not all force was the same (*inter vim et vim sit differentia*); not all violence sufficed to annul a marriage.⁸⁵ The coercion or threat of violence had to be strong enough to sway even a constant man. Moreover, the coerced party had to file a timely suit against the marriage unless s/he wished

⁸⁰ Noonan, "Power to Choose," 419–427; Freisen, *Geschichte*, 316–323. See also X 4.1.31, X 4.4.1, X 4.4.5; Brooke, *The Medieval Idea*, 150–152.

⁸¹ Helmholz, *The Spirit*, 239; Freisen, *Geschichte*, 598–599.

⁸² Brooke, *The Medieval Idea*, 278.

⁸³ Berman, *Law and Revolution*, 229.

⁸⁴ X 4.1.14. See also X 4.2.9 and C. 31 q. 2 c. 1–4; Helmholz, *The Spirit*, 230–256.

⁸⁵ X 4.1.6. See also Brundage, *Medieval Canon Law*, 166–168.

to prevent the lapse of time being interpreted as tacit consent.⁸⁶ What this meant in practice was for judges to decide. Some tribunals only accepted the claim of force and fear if weapons had actually been drawn.⁸⁷ Most canonists thought that ordinarily mere reverential fear in a child towards the parents without threats or physical force did not suffice to invalidate the union.⁸⁸ In addition, it was required that the party compelled to contract marriage never later consented to the union. This ‘consent’ could also be a euphemism for cohabitation and sexual intercourse, unless the coerced party had been forced to it, too.⁸⁹ Belated consent could ratify an initially invalid marriage. The Church sought to guarantee freedom of consent through even more concrete rules. If the validity of wedlock was doubted because an impediment of force and fear, the ecclesiastical judge was to sequester the coerced party and provide him/her with a safe and honest residence while the case was pending. This way, the freedom of consent could be guaranteed without fear of further pressure or compulsion.⁹⁰

By analogy it could then easily be maintained that disinheritance and other punishments against children, especially daughters, who married without parental consent were similarly against the canonical principle that marriage and betrothal were to be freely entered into. Even a pecuniary sanction for retracting a promise to marry, also known as *vitium ingratitudinis*, could be construed as coercive. Indeed, for example Hostiensis (1190~1200–1271) went as far as to consider the threat of disinheriting a daughter if she did not marry the suitor chosen by the father as constituting the impediment of force and fear invalidating the marriage.⁹¹ The English canon law courts wavered as to whether financial penalties levied against a woman who disregarded the wishes of her parents or kinsmen were to be interpreted as force annulling matrimony. For example, in two fifteenth-century cases from York the father’s threat of disinheriting his daughter and the brother’s threat to strip his widowed sister of her property rights were consid-

⁸⁶ X 4.1.15; X 4.1.28. See also Noonan, *Power to Dissolve*, 28–29; Noonan, “Power to Choose,” 432–433.

⁸⁷ *Ein Urtheilsbuch der geistlichen Gerichts*, 18–21; Pedersen, *Marriage Disputes*, 120–123; Helmholz, *Marriage Litigation*, 90–94. See also Cosgrove, “Marriage,” 44–46.

⁸⁸ Helmholz, *The Spirit*, 252–254; Noonan, *Power to Dissolve*, 30–35.

⁸⁹ X 4.1.13; X 4.1.21, X 4.18.4. See also Noonan, “Power to Choose,” 432–433; Pedersen, *Marriage Disputes*, 127–133.

⁹⁰ X 4.1.14.

⁹¹ Helmholz, *Marriage Litigation*, 91–94.

ered sufficient coercion to move the mind of the 'constant woman' in accordance with the insistence of canon law.⁹² According to Florentine synodal statutes of 1517, any party, including a parent, using force or the threat of force to induce another person to marry, was to be levied a high, fifty-ducat fine.⁹³

A controversy among learned Italian canon lawyers and jurists concerning the validity of municipal statutes flared up. Its subject were the penalties against daughters (*filiae familias*) contracting marriage without paternal consent. Many famous canonists, including Hostiensis and Johannes Andreae (*ca.* 1270–1348), considered such statutes to be contrary to the freedom of marriage, protected by divine law. As human law could not limit divine law and laymen could not validly legislate on matrimonial issues, secular statutes inhibiting the freedom of choice even indirectly were invalid. Other prominent lawyers, nevertheless, took an opposite view. The eminent conciliator Baldus de Ubaldis (*ca.* 1327–1400) did not doubt the validity of such statutes, because they regulated and punished behaviour that was 'against good mores', while not affecting the substance of matrimony. The Bolognese mid-fourteenth-century academic debate concluded that an ecclesiastical judge could not impede his secular colleague from imposing such penalties on a disobedient daughter.⁹⁴

This might savour of scholarly hair-splitting, but it is easy to see the sweeping significance of the dispute as a matter of principle. It should be observed, though, that the Church was wary of taking the defence of coercion too far. Canon law did not, for example, regard a coerced oath itself as invalid: '[c]oerced willingness is still willingness', and if such oaths could be fulfilled without imperilling the spiritual health of the coerced person, execution could be ordered. Only if the person could prove sufficient coercion, could (s)he be freed from the oath. On the other hand, the Church's stand on the validity of coerced baptism was inconsistent with the canonical denial of the invalidity of forced marriage.⁹⁵ If the canon law courts in Europe had started to apply the norms in full, the consequences might have rocked the hierarchies and the ties of obedience that bound society together.

⁹² Helmholz, *Marriage Litigation*, 92, 94; Donahue, *Law, Marriage, and Society*, 166–169. See also Poos, "Ecclesiastical Courts", Noonan, *Power to Dissolve*, 41–42, 45–46.

⁹³ Trexler, *Synodal Law*, 124–125.

⁹⁴ Dean, "Fathers and daughters," 93–95. Cf. Trexler, *Synodal Law*, 124.

⁹⁵ Helmholz, *The Spirit*, 167, 225–227.

This corresponds to the fate of certain other legal claims made by the Church. Helmholz has observed that the Church's claim of protection of and jurisdiction over so-called *miserabilis personae* (including orphans, widows, the weak and ill, etc.) 'clearly had the potential for unsettling secular justice and for upsetting secular rulers'. Nevertheless, in many regions the Church hesitated to take very far-reaching steps in enforcing its claim except in situations where no other legal recourse was available (*ex defectu justitiae*).⁹⁶ The Church exercised similar restraint in its attitude toward the effects of excommunication on family and household duties.⁹⁷

Why the hesitation? One may suppose that it was not in the long-term interests of the Church to divest heads of households of their authority, privileges and powers, nor foment protracted power struggles with secular rulers. The inherent conservativeness of the Church probably prevented it from asserting its authority in this way. Undermining the authority of the father and the head of the household could result even in the weakening of ecclesiastical hierarchies. In addition, it has also been argued that the Church might have accepted family control over marriage 'because it tamed the dangers of love that could lead to sex and sin'.⁹⁸ Ultimately, the Church was not prepared to develop these steps systematically to their full potential. Therefore, the result was coexistence: 'what was allowed by the Church was punished by the lay authorities and the two laws stood and were maintained side by side'.⁹⁹ Or, as others have pointed out, the emphasis on the high medieval turning point in the field of marriage makes one 'in danger of forgetting how much remained as before.... Many of the old attitudes remained unchanged, and beside them a whole world of fresh ideas grew up, which were to live for centuries in uneasy harmony with the old'.¹⁰⁰

The Words of Consent: Sponsalia de futuro and de praesenti

One of the most revolutionary features of the canonical marriage doctrine was that mere words expressing consent without any accompany-

⁹⁶ Helmholz, *The Spirit*, 134–141, quotation 134–135; Sheehan, *Marriage, Family and Law*, 18.

⁹⁷ Helmholz, *The Spirit*, 382–383.

⁹⁸ Ribordy, "The Two Paths," 331.

⁹⁹ Caenegem, "Law in the Medieval World," 42.

¹⁰⁰ Brooke, "Marriage and Society," 18.

ing formalities made a marriage, or an engagement. Here again, the new ecclesiastical doctrine of marriage formation differed considerably from the conceptions of the early medieval Church and society that required formalities for the making of a valid marriage. A decretal stated clearly that matrimony was contracted by consent alone and could not be invalidated although the customs of the country had not been observed.¹⁰¹ The tense of the mutual words expressing the marital consent of the parties came to be crucial. If the words were in the present tense, e.g. 'I accept you now as my husband/wife', the couple contracted marriage then and there by mutually expressing their consent. If the words, by contrast, were in the future tense, e.g. 'I will accept you as my husband/wife (at some future point)', the couple got engaged by the exchange of reciprocal consent.

Anselm of Laon (d. 1117), 'the father of the *sponsalia*-distinction', differentiated between 'faith of contract' (*fides pactionis*) and 'faith of consent' (*fides consensus*). *Fides pactionis* was a promise to contract marriage in the future without immediate matrimonial intent. Its giver was bound to honour his promise by conscience and a penance was prescribed for changing one's mind (*de fide mutata*), but marriage could validly be contracted with another. *Fides consensus* had been given in genuine matrimonial intent and by it the couple were judged to have actually contracted an indissoluble marriage. William of Champeaux (d. 1121) developed the distinction further and Peter Abelard (1079–1142), accepting William's views, opposed a union for contracting marriage (*foederatio de coniugio contrahendo*) against a conjugal union (*foederatio coniugii*).¹⁰²

Hugh of Saint Victor distinguished between marriage vows and a promise of future marriage. If the couple said to each other: 'I receive you as mine, that hereafter you may be my wife (husband) and I your husband (wife)', they had contracted marriage.¹⁰³ Finally, in the same tradition Peter Lombard named the two in a fashion that became the standard terminology of classical canon law. The 'faith of contract' resulted in the couple, the *sponsi*, pledging each other their troth in words in the future tense (*per verba de futuro*), while the 'faith of consent' was expressed in words in the present tense (*per verba de praesenti*) creating

¹⁰¹ X 4.1.1. See also Daudet, *Études sur l'histoire*, 167–168.

¹⁰² Reinhardt, *Die Ehelehre*, 78–86, 96; Gaudemet, *Sociétés et mariage*, 40–41, 171.

¹⁰³ *On the Sacraments of Hugh of Saint Victor*, 2.11.5, 330–333.

an indissoluble bond between the *coniuges*. Future-tense consent, ‘I will accept you as my wife/husband’ (*Accipiam te in virum/uxorem*), did not create valid matrimony, while present-tense consent, ‘I accept you as my wife/husband’ (*Accipio te in virum/uxorem*), did.¹⁰⁴

The decretals of Alexander III, many of which were included in the *Liber extra*, enforced this policy. The *sponsalia de futuro* was dissoluble—even if the couple had pledged their troth or made an oath (*de matrimonio contrahendo... fidem dederunt aut iuramentum fecerunt*)—but the couple was to be diligently exhorted to keep their promises.¹⁰⁵ On the other hand, even if a minor had vowed to contract marriage with someone, (s)he could be forced to honour the promise by ecclesiastical censure if no impediment or reasonable cause existed.¹⁰⁶ The dissolution of *sponsalia de futuro* will be discussed in more detail in Chapter 3.3. But what, then, were these phrases of consent in practice? Modern observers have noted that had canon law specified exactly the words *de praesenti* and *de futuro*, the ecclesiastical courts would have had an easy task. Canon law, having made consent the essential element of marriage, ‘never adequately distinguished between marriage and betrothal’.¹⁰⁷

The papal decretals gave some examples of such words in Latin. For example, if the couple reciprocally said ‘I take you as mine’ (*ego te in meum/meam accipio*), this formed marriage then and there.¹⁰⁸ If a couple made a mutual promise from then on to treat each other and be faithful as husband and wife (*iuramentum praestitit, ab eo tempore pro coniuge teneret*), this was considered to be a valid marriage.¹⁰⁹ As for words of future-tense consent, the standard formula was ‘I will receive you as mine’ (*ego te recipiam in meam/meum*).¹¹⁰ These lists, however, were far from exhaustive and they were intended as only exemplary (*sive verba similia*). The canonists provided more examples. Some phrases, nevertheless, were ambiguous and disputed among canonists: *volo te habere in uxorem/virum* (I will/want to have you as my wife/husband) is

¹⁰⁴ *Sententiae in IV libris distinctae* of Peter Lombard, 4.27.3, 4.28.3; Gaudemet, *Sociétés et mariage*, 171.

¹⁰⁵ X 4.1.2. For a concise presentation of the Alexandrine policy, see Donahue, “The Dating,” esp. 102–107; Brundage, *Law, Sex, and Christian Society*, 332–337.

¹⁰⁶ X 4.1.10.

¹⁰⁷ Helmholz, *Marriage Litigation*, 34; Gottlieb, “The Meaning of Clandestine Marriage,” 72–73.

¹⁰⁸ X 4.1.31.

¹⁰⁹ X 4.1.9.

¹¹⁰ X 4.1.31.

one of these although the majority of canonists came to agree that it constituted marriage.¹¹¹

One of the main problems of the words of marriage was that while the canon law regulating them was in Latin, the actual exchanges of consent between the couples were made in the vernacular. Courts were thus assessing the vernacular phrases and judging them in the light of the corresponding Latin legal formulas. This was bound to cause difficult problems of interpretation. Court records from all over Europe provide us with examples of cases in which the relationship between the actual words used and their interpretation were disputed.¹¹² Therefore, a genuine risk of confusion was present in common people's exchanges of consent, especially when these were translated into Latin.¹¹³ When, for example, the fifteenth-century English practice changed so that witness depositions were recorded in the original vernacular, this was appraised as a 'real improvement in the conduct of marriage litigation'.¹¹⁴ Clerics realized that ignorant people occasionally failed to understand the force of the words exchanged: 'often thinking they are becoming engaged, they speak out of the words of marriage' or vice versa.¹¹⁵ Canon law also decreed that if a marriageable couple contracted in unclear words (*per verba obscura*), the words were to be understood in their usual sense.¹¹⁶

After the principal rules of the ecclesiastical doctrine concerning the words of engagement and marriage had been formulated in the late twelfth century, it became a priority to inform the unsophisticated populace of the finesses and distinctions of the phrases. The late-medieval laity learned the consensual doctrine and proper words of consent through various ecclesiastical channels. Synodal and provincial statutes were an important means of educating the clergy and laity alike.¹¹⁷ Another was the literary genre of confessors' manuals, informing

¹¹¹ Helmholz, *Marriage Litigation*, 36–46; Donahue, *Law, Marriage, and Society*, 165–166, 198–199; Korpiola, "The Two Husbands"; Brozyna, *Ecclesiastical Courts*.

¹¹² E.g. *Ein Urtheilsbuch der geistlichen Gerichts*, 9–12; Donahue, *Law, Marriage, and Society*, esp. chs. 2–6.

¹¹³ Houlbooke, *Church Courts*, 57; Pedersen, "Did the Medieval Laity Know," 115–119; Donahue, *Law, Marriage, and Society*, e.g. 47, 108–109, 116, 135, 165–166.

¹¹⁴ Helmholz, *Marriage Litigation*, 181–182.

¹¹⁵ Trexler, *Synodal Law*, 125; Ribordy, *Faire les nopces*, 105–106; Brozyna, *Ecclesiastical Courts*.

¹¹⁶ X 4.1.7.

¹¹⁷ E.g. 84, Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 208; Statuts synodaux complémentaires de Guillaume Le Maire, *Les statuts synodaux II*, 232–233;

confessors and parish priests in daily contact with their parishioners what to teach their flocks. Indeed, e.g. in certain English diocesan statutes every priest was ordered to possess a copy of certain pastoral treatises. Public notaries could also be asked to supervise the exchange of consent.¹¹⁸ As marriage was made for life, it was imperative that people were only bound by such ties, whether indissoluble matrimony or dissoluble engagement, they had actually meant to contract.

In principle, the words of consent were secondary to the intention of the parties. When the bishop of Norwich interviewed Margery Paston about the words with which she had contracted with the family bailiff in order to determine whether they constituted marriage or not, she repeated the phrases used. While admitting that she did not know whether these words made marriage, she declared that she considered herself bound in her conscience regardless.¹¹⁹ This uncertainty of how the words exchanged would be interpreted is reflected also in the fact that in certain cases the litigant claimed the couple had either a contracted marriage *per verba de praesenti* or *per verba de futuro* followed by consummation, depending on the court's assessment of the words used.¹²⁰

The spreading notions of the canonical terminology not only influenced local practices, but also vernacular languages. Because the legal significance of *sponsalia* or *desponsatio* depended on the tense of the exchange of the consent, the canonical tenet of matrimony caused confusion in many languages, Latin being no exception. In classical Latin *sponsalia* signified an engagement and *despondere* to betroth, which in turn were distinct from the wedding, *nuptiae*.¹²¹ Patristic texts started to use *desponsatio* for the Jewish betrothal, which, as a legal institution, was not identical to the Roman engagement, and *desponsata* as a synonym for the classical *sponsa*, bride.¹²² As a result the terminology became equivocal already in the Early Middle Ages so that by the High Middle Ages, *desponsacio* not only meant engagement but had also

Sheehan, *Marriage, Family and Law*, 138–139, 160; Pedersen, “Did the Medieval Laity Know,” 119, 137, 147–148.

¹¹⁸ Pedersen, “Did the Medieval Laity Know,” 130–131; Pedersen, *Marriage Disputes*, 106–107, 111, 130; Murray, “Individualism,” 138–139, 143.

¹¹⁹ Margaret Paston's letter to John Paston (10 or 11 September 1469), in *Love, Marriage, and Family*, 161–162; Murray, “Individualism,” 121–122.

¹²⁰ Sheehan, *Marriage, Family and Law*, 55, 57.

¹²¹ Treggiari, *Roman Marriage*, 139–150.

¹²² Gaudemet, *Sociétés et mariage*, 159–163, 187; Reynolds, *Marriage*, 317–318.

come to mean betrothal or marriage, at least if the adequate words of consent had been used. The same tendency can be observed in the use of the word *sponsalia*.¹²³ For example, in a papal decretal, *despondere* (*desponsasset*) clearly signified marriage, while the subsequent rule later deduced from the case specifies that it applied to the present tense (*per verba de praesenti desponsat*).¹²⁴

In fact, even medieval clerics could occasionally be bewildered by the terminology of *matrimonium* and *sponsalia*, which ‘often had meanings that confuse the modern student and that may well have left even the most efficient archbishop at a loss as to their sense’.¹²⁵ This uncertainty also became a handicap to the precision of the legal language. Because the effects of the two *sponsaliae* were so different, the ecclesiastical norms and legal texts had to distinguish clearly between marriage and engagement. Paradoxically, the ecclesiastical marriage dogma had clouded the issue to the extent that the words themselves no longer conveyed the precise intention of the scribe to the reader. This change not only affected Latin, but also various vernacular languages in various parts of late medieval Europe. The words meaning betrothal or engagement were extended also to mean marriage.¹²⁶ As a result, canonists often specified whether they meant *sponsalia de praesenti* or *de futuro*. Conscientious writers also distinguished between engagement and marriage by speaking of *sponsalia (de futuro)* for the former and *matrimonium (de praesenti)* or *nuptias* for the latter.¹²⁷

In interpreting the words of the case, the courts also took supplementary signs into account. The common fame of the neighbourhood (*fama publica*) of the existence of a marriage was considered as proof in canon law courts.¹²⁸ In fact, even certain secular courts employed the legal presumption that a woman was considered to be a man’s wife if the couple was commonly reputed to be married, she had been cohabitating with him at the time of his death and her status had not been

¹²³ Brooke, *The Medieval Idea*, 115, n. 25, 145–146; Gaudemet, *Sociétés et mariage*, 172; Reynolds, “Marrying,” 11.

¹²⁴ X 4.4.5.

¹²⁵ Sheehan, *Marriage, Family and Law*, 136.

¹²⁶ Sheehan, *Marriage, Family and Law*, 136, 139–141; Hall, *The Arnolfini Betrothal*, 49–50.

¹²⁷ E.g. Statuts synodaux de Nicolas Gellent 1277, *Les statuts synodaux II*, 134–135 (*matrimonium—sponsalia*); Hall, *The Arnolfini Betrothal*, 49–52.

¹²⁸ Brucker, *Giovanni and Lusanna*, 27, 69–70; Mundy, *Men and Women*, 81; Sheehan, *Marriage, Family and Law*, 60–61, 65; Helmholz, *Marriage Litigation*, 46–47; Sellar, “Marriage,” 121–122; Michison – Leneman, *Girls in Trouble*, 62–63.

questioned during his lifetime.¹²⁹ Whether the parties referred to each other as husband and wife might be another sign speaking in favour of marriage.¹³⁰ The giving of a ring could under some circumstances be interpreted as a sign of marriage, but here the canonists seem to have been rather noncommittal: it depended largely on the customs of the region whether a ring was given at the betrothal or wedding. In Italy, for example, the ring was more strongly associated to marriage than betrothal.¹³¹ Sharing bed and board, i.e. publicly sleeping together and eating together from the same dish or platter, were also considered as circumstantial evidence speaking for marriage.¹³²

Evidence and Interpretations of the Influence of the Consensual Marriage Theory

Some scholars have argued that the Church's strategy was to diminish the power of family, larger kin and feudal lords by emphasizing individualism expressed in the consent of the future spouses themselves.¹³³ The consensual theory of marriage was only part of the more general twelfth-century intellectual interest in individualism. Indeed, according to some '[t]he discovery of the individual was one of the most important cultural developments in the years between 1050 and 1200.'¹³⁴ The individual became visible in various contexts: a part of society, the focus was on a person's inner intentions rather than merely judging his or her external acts and an interest in relations between people. In the arts, the concern for the individual and psychology had found expression in autobiographies, satires and personal portraits. As for religion, this period has been called 'a turning-point in the history of Christian devotion', developing among other things inner piety, with personal love for Christ and meditation on his life and passion, and a growing emphasis on regular confession.¹³⁵ Other scholars have been more reserved and pointed out that it should not be forgotten that the

¹²⁹ Sellar, "Marriage," 118–122.

¹³⁰ *Ein Urtheilsbuch der geistlichen Gerichts*, 14; Helmholz, *Marriage Litigation*, 46; Brucker, *Giovanni and Lusanna*, 21; Michison – Leneman, *Girls in Trouble*, 62, 138–139.

¹³¹ Brucker, *Giovanni and Lusanna*, 19–21; Brundage, *Law, Sex, and Christian Society*, 502; Hall, *The Arnolfini Betrothal*, 62–63; Kuehn, "Contracting Marriage," 391, 396–398.

¹³² *Ein Urtheilsbuch der geistlichen Gerichts*, 14. See also Sellar, "Marriage," 121–122.

¹³³ Donahue, "The Policy," 271–277; Sheehan, *Marriage, Family and Law*, 40.

¹³⁴ Morris, *The Discovery*, 158; Murray, "Individualism," 126–127.

¹³⁵ Morris, *The Discovery*, passim and esp. 158–160. See also Stock, *Listening*, 130, 132–135; Gurevich, *The Origins of European Individualism*, 1–15.

‘twelfth-century Renaissance’ largely only influenced the enlightened upper strata of society.¹³⁶

The expansion of individualism left its mark on canon law, the doctrine of free individual consent to marriage being one of its expressions. Before 1100, the more societally oriented marriage law stressed ecclesiastical sanctions and aimed at eliminating scandals to Christian society, meaning unions disapproved by the Bible or the ecclesiastical authorities, in which the parties obstinately persisted. In the course of the twelfth century the canon law of marriage became individualistically oriented, giving people the opportunity to live securely in a marriage that was valid according to ecclesiastical standards.¹³⁷ Scholarly opinions of the ends and aims of the Church’s policy of consent have varied. Some have stressed the revolutionary nature of the freedom and ‘democracy’ of marriage.¹³⁸ Others have more cautiously doubted the intention of the consensualists to sponsor adolescent self-determination. Still, freedom of marriage was certainly the result of the law and those who had helped to create the policy probably realized its future consequences.¹³⁹

Feudal law was disagreed with canon law on the issue of freedom to marry, but even the interests of fiefs and lords had to make some compromises with ecclesiastical dogma. The feudal lord possessed considerable power to pressure or force a vassal heir or heiress to marry a person of his choice. A liege lord usually held the guardianship of his deceased liegemen’s minor children, although the wardship could be sold. This was a profitable game. Lords could also force female fiefholders to marry if, for example, personal military service was owed. Some laws held that the lord had to present the heiress with a choice among three marriage candidates of her own rank and station. Failure to comply with the lord’s wishes could entail the loss of the fief.¹⁴⁰ For other kinds of fiefs, the heiress only had to obtain the lord’s permission prior to the marriage, and in some cases the lord could lose his right

¹³⁶ Gurevich, *The Origins of European Individualism*, 9.

¹³⁷ Landau, “Ehetrennung,” 153–154.

¹³⁸ Noonan, “Power to Choose,” 429–431.

¹³⁹ Helmholz, *The Spirit*, 239–240.

¹⁴⁰ E.g. Magna Carta, 6–8, Royal Concerns about Marriage, Feudal Agreements, Control of Marriage in *Love, Marriage, and Family*, 371–374; Brundage, *The Crusades*, XVII, 268; Brundage, *Law, Sex, and Christian Society*, 438–439; Walker, “Free consent”; Donahue, *Law, Marriage, and Society*, 181–182.

to refuse his consent.¹⁴¹ Even Pope Innocent III, the defender of the freedom of marriage, felt by no means impeded by canon law from pressuring his wards to marry whomever he chose.¹⁴²

Serfs were under various different marriage restrictions. Earlier it had been disputed whether serfs had even the power to accept or refuse (*velle vel nolle*) without the master's permission. For example, both Peter Lombard and Gratian had denied this possibility, while Walter of Mortagne of the school of Laon, writing about 1138, had considered the master's lack of opposition, even if resulting from ignorance, as consent.¹⁴³ The matter was finally resolved by the famous decretal *Dignum est* of Pope Adrian IV (1154–1159) and confirmed by two subsequent decretals of Alexander III. As neither free men nor serfs could be denied the sacraments, the possibility to marry was similarly to be open to both alike, and serfs and slaves could validly contract matrimony without the consent of their masters or owners.¹⁴⁴ Despite this, serfs might be forced to marry a certain person named by their lord or his representative. Under a more liberal regime the unfree tenant was able/forced to purchase a seigneurial licence (*merchet, formariage, licentia maritandi*) in order to be able to follow his own wishes or marry outside the estate. Even free peasants holding customary land were occasionally required to purchase the permission to marry freely.¹⁴⁵

In some regions, e.g. Swabia, where serfs were in a subjugated position, marriages to 'outsiders' were severely penalized by loss of inheritance rights and confiscation of property. On some estates, at the death of an 'exogamous' male serf, two-thirds of his property was confiscated (one-third for a female serf) and the couple or their children risked losing their inheritance rights. Other lords could force the 'exogamous' bondman to purchase the freedom of his spouse making her bondwoman of his manor. Failing that, the couple had to pay annual fines.¹⁴⁶ Such customary manorial payments are known to have existed in the High

¹⁴¹ Brundage, *The Crusades*, XVII, 267–268.

¹⁴² Rousseau, "A papal matchmaker," 268–270. For examples of a similar logic, see Berkhofer, "Marriage," 20.

¹⁴³ Sheehan, *Marriage, Family and Law*, 108, 232–234.

¹⁴⁴ X 4.9.1; Landau, "Hadrians IV. Dekretale"; Berkhofer, "Marriage," 16–21.

¹⁴⁵ E.g. Marriage Cases in Village Courts, in *Love, Marriage, and Family*, 379–386; Clark, "The Decision to Marry"; Turlan, "Une licence de mariage," 1448–1450, 1453; Berkhofer, "Marriage," 5–8, 11–15, 24–26. See also Dillard, "Women in Reconquest Castile," 72.

¹⁴⁶ Blicke, *The Revolution of 1525*, 30–32, 53.

Middle Ages, even in the fourteenth century, in France and England. Thus lords could protect their interests in determining who was going to farm their lands, but especially later, revenues were a more important motive. In Germany, where serfdom lasted longer, the marriage restrictions were on the peasant grievance lists during the great Peasant War.¹⁴⁷ Ecclesiastical landowners, churches and monasteries were no better than secular lords in exacting payments and imposing penalties on those serfs wishing to choose freely.¹⁴⁸

Hardly all clerics rushed to champion every oppressed serf or maiden, pressured by their superiors or families, in defence of the freedom to marry. A young woman's motives for resisting a proposed marriage were also of importance in assessing the reprehensibility of her behaviour. Wishing to become a nun was more acceptable than love for another man.¹⁴⁹ The oft-cited romance of Margery Paston with the family's steward Richard Calle tells of the efforts made by the bishop of Norwich to persuade Margery to obey and be guided by her parents. Reminding her of her birth, family and friends, the bishop pointed out the shame resulting from her disobedience and foresaw her risking the loss of the help and comfort of her family by contracting an unacceptable marriage. Events proved him right, as Margery's incensed mother told her servants that Margery was to be denied access to her house.¹⁵⁰ The evidence of pastoral manuals and confessional literature indicates that by the 1220, the English clergy had generally come to know and enforce the consensual marriage doctrine. By the mid-fourteenth century, the doctrine was also quite familiar to the laity and was taken into account in their lives and practices.¹⁵¹ Moreover, research shows that in late thirteenth-century England tenants refused marriages that had been arranged for them by their lords. The ecclesiastical requirements for the freedom of marriage not only may have provided tenants with a legitimate excuse to resist but simultaneously put pressure on the lord to accept that forced unions were violating canon law and therefore invalid. A similar development may have favoured feudal wards to

¹⁴⁷ Turlan, "Une licence de mariage"; Clark, "The Decision to Marry," 499, 501; Blicke, *The Revolution of 1525*, 26, 29, 62, 69.

¹⁴⁸ Blicke, *The Revolution of 1525*, 31, 33–34; Clark, "The Decision to Marry," 500–504; Turlan, "Une licence de mariage"; Berkhofer, "Marriage."

¹⁴⁹ Duby, *Love and Marriage*, 25.

¹⁵⁰ Margaret Paston's letter to John Paston (10 or 11 September 1469), in *Love, Marriage, and Family*, 161; Murray, "Individualism," 121–122.

¹⁵¹ Murray, "Individualism," 130–136, 141.

escape having to pay pecuniary fees for permission from the lord to marry whomever they themselves wished.¹⁵²

There can be no doubt that by championing the freedom of consent the Church provided children with justification and institutional support in braving their parents' displeasure. This is visible even in the highest circles, as in the case of Edward of Woodstock, Prince of Wales, who spurning the politically immensely advantageous union with the heiress of Flanders, clandestinely married the widowed Countess of Kent in 1361. Without the support of canon law, the reluctant *infante* Jaime of Aragon would never have defied the wrath of both kingdoms by refusing to consummate his marriage to Leonor of Castile becoming a monk instead. Perhaps the marriage of the *dauphin*, the future Louis XI of France to Charlotte of Savoy, a hostile move behind the back of his father, King Charles VII, would never have become reality, either.¹⁵³ There are also well-documented cases involving ordinary people thwarting paternal or maternal marital strategies and exercising their own right to choose, and using canon law for that very purpose.¹⁵⁴ Even though the buds of conflict between parents/kin and the principals usually remained dormant, occasionally they did burst into flower. When the theoretical possibility of disagreement became a reality, canon law sided with the parties.

2.3 *The Church's Policy of Ecclesiastical Solemnization of Marriage*

Solemnization in facie ecclesiae: Discovering Marriage Impediments

Although the Church had made contracting wedlock deceptively easy, it did not wish matrimony to be contracted informally. By freeing the creation of a conjugal bond from all obligatory formalities, ceremonies and solemnities, the Church had, in fact, created a situation in which nobody had any control over marriage. Communities, lords, families, or even the Church could not prevent marriages from being contracted. Nor had they any means of verifying that the couple was free to marry. Although this lack of control had been brought about

¹⁵² Clark, "The Decision to Marry," 500–502, 510–511; Walker, "Free consent."

¹⁵³ Wentersdorf, "The clandestine marriages," 217–218; Sturcken, "The unconsummated marriage," 190–193; Ribordy, *Faire les nocces*, 32–33.

¹⁵⁴ E.g. Pedersen, *Marriage Disputes*, 29–36, 110–114.

by the Church, it was contrary to the Church's policy in the long run. While the mutual and free exchange of present-tense consent by two otherwise marriageable persons fulfilled the minimum requirements of the Church, the ideal marriage was a public ceremony.¹⁵⁵

The policy of the Western Church came to differ fundamentally from that chosen by the Eastern Church where during the reign of the Emperor Leo (866–912), the ecclesiastical benediction of the marriage became the precondition of valid wedlock. During the eighth century, some Western councils tried to introduce a custom that couples were to declare to the priest, relatives and neighbours their intention to marry so that a possible impediment of consanguinity or the lack of permission of the parents could be investigated.¹⁵⁶ The Carolingian church already tried to make aristocrats marry publicly so that the clergy was involved in the rituals. Indeed, in 802, Charlemagne accommodated himself to the Church's desires by requiring the people to avoid incestuous alliances by conducting an ecclesiastical inquiry and conferring its nuptial blessing. Probably these attempts had little effect outside princely and noble circles. Besides, as the Roman ritual forbade widows, widowers and other non-virgins to be blessed by the Church, there were restrictions to the availability of the nuptial benediction in the rituals.¹⁵⁷

The theologians of the school of Laon supported the publicity of marriages, relying on the Pseudo-Isidorian decretals, among other authorities. These forgeries insisted on many formalities of marriage: the betrothal of the woman by her relatives, lawful endowment, nuptial benediction, bridesmaids attending to the bride, spending of two or three days and nights in prayer and abstention from sexual intercourse. If these preconditions were not observed, the children born of the union could be deemed illegitimate (*spurii*) and unable to inherit.¹⁵⁸ Indeed, it has been presumed that the Church favoured the custom of giving dowries precisely because of the public nature of doing so.¹⁵⁹ The ecclesiastical nuptial rites started at the church door (*ad januas ecclesiae*), and it has been asserted that one of the main functions of the size and

¹⁵⁵ See also Donahue, "The Dating," 105–106.

¹⁵⁶ Daudet, *Études sur l'histoire*, 46–49. See also Ritzer, *Formen, Riten*, 114–120.

¹⁵⁷ Reynolds, *Marriage*, 394, 402–403; Sheehan, *Marriage, Family and Law*, 287 and n. 35. See also Knuutila, *Avoliitto*, 213–215, 487–493, 504–506.

¹⁵⁸ Reinhardt, *Die Ehelehre*, 94–95.

¹⁵⁹ Brundage, *Law, Sex, and Christian Society*, 190, 275.

beauty of the late medieval church porches was to provide the wedding with an appropriate background.¹⁶⁰

The reading of the banns became the paramount means of guaranteeing that there were no impediments between the would-be spouses. The ecclesiastical ceremony was to be preceded by the reading of the banns, or publicizing the intention to marry, on three successive Sundays at the parishes of the parties. If an impediment was discovered, the parish priest would refrain from joining the couple together *in facie ecclesiae*, in the sight or supervision of the Church. Anyone knowing of an impediment to the marriage was to make it public. Before the matter had been investigated in an ecclesiastical inquiry, and either a papal dispensation¹⁶¹ had been obtained or no impediment was found to exist, the union was not solemnized leaving private contracts an option. In addition, the couple was supposed to abstain from intercourse until after solemnization.

Canon 51 (*Cum inhibitio*) of the Fourth Lateran council of 1215 was a means of forbidding clandestine marriages and imposing suitable penance (*condigna penitentia*) upon the parties. All priests were prohibited to participate in, witness or solemnize them on pain of a three-year suspension from office or a more severe punishment.¹⁶² In 1012, the provincial synod of Rouen had already spoken of a prior examination of possible impediments (consanguinity or precontract) to the proposed marriage.¹⁶³ In 1200, the Parisian synodal statutes insisted on proclaiming a future marriage at church on three successive occasions and having it celebrated by the parish priest on pain of excommunication. That same year the English provincial council of Westminster issued statutes designed to improve the supervision of the laws regarding consanguinity and affinity. These statutes also insisted on priestly solemnization *in facie ecclesiae* after three publications of the banns.¹⁶⁴ Improving control was thus to extend certain regional customs to the universal Church.

If there was reason to suspect that an impediment existed, the marriage was to be expressly forbidden. If any couples, between whom an

¹⁶⁰ Brooke, *The Medieval Idea*, 253–254.

¹⁶¹ For a concise presentation of the early history of papal dispensations, see Baldwin, “Critics of the Legal Profession,” 252–253 and Freisen, *Geschichte*, 891–906.

¹⁶² *Constitutiones Concilii quarti Lateranensis*, 91–92. The canon *Cum inhibitio* of 1215 was incorporated into the *Liber extra* as X 4.3.3. See also Brozyna, *Ecclesiastical Courts*.

¹⁶³ Molin – Mutembe, *Le rituel*, 31, 63.

¹⁶⁴ Gaudemet, *Sociétés et mariage*, 397; Sheehan, *Marriage, Family and Law*, 122, 130, 136, 145.

impediment existed, presumed to contract a clandestine or prohibited marriage, their children were considered illegitimate despite parental ignorance of the impediment. The rationale was that by contracting clandestinely the parents appeared to be feigning ignorance (*affectatores ignorantie*). The same penalty, illegitimacy of the children, was extended even to couples knowing of the impediment married solemnly in church (*in conspectu ecclesie*). In addition, all those who claimed that an impediment existed only in order to maliciously hinder a legitimate marriage were to receive ecclesiastical punishment.¹⁶⁵

Strangers and newcomers, unknown both to the parishioners and their pastor, could pose a problem. The parish priest was ordered to contact a prelate in whose jurisdiction they had formerly resided, or the priest of the strangers' birth parish or the parishes where they had formerly lived. In doubt, the parish priest was to refer the case to his superior. The Church established sanctions in order to discourage the abuse of the ecclesiastical system of banns, for it was easy for anyone to obstruct or delay a proposed marriage by claiming that an impediment existed preventing the union. If a person was found to have maliciously hindered a marriage by claiming an impediment, (s)he could be ordered to perform penance.¹⁶⁶ In addition, if a person had been present at the reading of the banns knowing of an impediment, his or her right later to attempt to have the union annulled because of the impediment was limited. In some synodal statutes, (s)he even risked excommunication for concealing such knowledge.¹⁶⁷

Yet the insistence on solemnization was not absolute. In Italy, the ceremony was rarely performed in the priests' presence. A ninth-century Byzantine decree had persisted that marriages should either be performed in front of a priest, judge or notary. The two last options came to be favoured by the wealthier, needing legal instruments to define their property rights, while the poor preferred the cheaper option of solemnizing *in facie ecclesiae*. Later, this tradition influenced the Sicilian royal statutes decreeing that all marriages performed without clerical

¹⁶⁵ 51, *Constitutiones Concilii quarti Lateranensis*, 91–92. See also 85, 91, Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 208, 210; *Les statuts synodaux IV*, 131; Donahue, *Law, Marriage, and Society*, e.g. 390, 454–455, 461–464.

¹⁶⁶ 84, Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 208; Sheehan, *Marriage, Family and Law*, 46, note 29, 148–150; Donahue, *Law, Marriage, and Society*, 287.

¹⁶⁷ Sheehan, *Marriage, Family and Law*, 133, 135, 150–151.

presence and nuptial blessing were invalid.¹⁶⁸ In many Italian regions since the tenth century one was virtually compelled to use a notary who acted as a ‘representative of the publicity’. Notaries drafting the marriage agreement also registered the consent of the spouses in the presence of their relatives and inquired about the existence of possible impediments. For example in Florence, notaries officiated at the whole wedding ceremony, just as priests at the solemnization, and drew up the marriage contract.¹⁶⁹ Notarial marriages, common especially in Italy and Southern France, were not considered clandestine or in conflict with canon *Cum inhibitio* of 1215.¹⁷⁰

Consequently, in Renaissance Italy reading the banns was not customary or obligatory despite episcopal attempts and provincial statutes to introduce the custom. Late thirteenth-century Italian priests were instructed to inquire whether foreigners wishing to marry were single as they claimed. The battle against incest and bigamy was the motivating factor behind the norms. While even secular legislation occasionally upheld the requirement that the banns be read, its motivation for doing so may have been financial, viz. the protection of creditors, and the application of the statute was not necessarily left to the priests.¹⁷¹

Canon law had created a presumption of matrimony: in case of doubt about the circumstances of a matrimonial cause but not full proof, the court would presume in favour of matrimony (*favor matrimonii; presumitur pro matrimonio*). Or, as the court of Augsburg argued in 1351: ‘*quod tutius pro matrimonio judicandum quam contra*’.¹⁷² Indeed, canon law ‘seems to have assumed an unstated premise that it was important to define as many relationships as possible as marriages’.¹⁷³ Nevertheless, canon law refused to support clandestine unions through a presumption in favour of marriage, nor could couples who had contracted clandestinely

¹⁶⁸ Guerra Medici, “Women in Civil and Canon Law,” 221; Brundage, *Law, Sex, and Christian Society*, 442.

¹⁶⁹ Leisching, “Eheschliessungen,” 22, 26, 35; Klapisch-Zuber, *Women, Family and Ritual*, 184–185, 194–196; Brucker, *Giovanni and Lusanna*, 16, 73.

¹⁷⁰ X 4.4.3 (*praesente scilicet sacerdote aut etiam notario*); Leisching, “Eheschliessungen,” 39–40; D’Avray 1998; Molin – Mutembe, *Le rituel*, 120–121; Hall, *The Arnolfini Betrothal*, 54–55.

¹⁷¹ Guzzetti, “Separations and separated couples,” 253; D’Avray, “Marriage ceremonies,” 109–112; Hall, *The Arnolfini Betrothal*, 55.

¹⁷² *Ein Urtheilsbuch der geistlichen Gerichts*, 14; Brundage, *The Crusades*, XVI, 248. See also Donahue, *Law, Marriage, and Society*, e.g. 76, 83.

¹⁷³ Brundage, *Law, Sex, and Christian Society*, 362. Cf. Lefebvre-Teillard, *Les officialités*, 149.

expect ecclesiastical succour if one party denied the contract and there were no witnesses to the exchange of consent. If there were witnesses to the union, however, the presumption of marriage was applied.¹⁷⁴ Although popes confirmed secret present-tense marriages and dissolved subsequent public marriages, the clandestinely married couple could be required to solemnize the marriage *in facie ecclesiae*.¹⁷⁵

The Paradox of Clandestine Marriage: Valid But Illicit

Secret unions could jeopardize the stability of family and marriage ties through the problems of proof. It was impossible to prove a clandestine and unwitnessed marital union if one of the parties denied its existence and was prepared to risk the ensuing mortal sin and eternal damnation. The mid-twelfth-century theologians and canonists, including Gratian and the Parisian consensualists, all acknowledged this challenge and unanimously condemned secret marriages.

Gratian observed that all authorities, which he cited several, forbade secret weddings (*occultae nuptiae*). Yet, although such marriages were prohibited and against the law, once contracted they were indissoluble as long as both parties admitted to the clandestine marriage. But if one claimed the existence of a marriage while the other denied it, matrimony could not be proven.¹⁷⁶ Hugh of Saint Victor agreed: the second public marriage had to be upheld if one of the parties to the first clandestine union admitted it and the other denied it. Otherwise great confusion would result and what could not be proven to the Church, the Church could not judge. The party of the first clandestine union who knew himself or herself to be bound by conscience to the other had to remain continent and not remarry.¹⁷⁷ Peter Lombard admitted that secretly exchanged present-tense consent constituted a valid marriage, although he felt that this was a dishonest way of contracting marriage, as matrimony did not sanctify occult consent.¹⁷⁸

Pope Alexander III adjudicated that occult marriages could be subsequently publicized by celebrating marriage *in facie ecclesiae* and the children considered legitimate, unless manifest and rational reasons

¹⁷⁴ X 4.3.1; Brundage, *Law, Sex, and Christian Society*, 276, 363, 412. See also Kelly, *Love and Marriage*, 172.

¹⁷⁵ Wentersdorf, "The clandestine marriages," 216, Appendix B, 222.

¹⁷⁶ C. 30 q. 5 c. 1–10.

¹⁷⁷ *On the Sacraments of Hugh of Saint Victor*, 2.11.6, 333–335.

¹⁷⁸ *Sententiae in IV libris distinctae* of Peter Lombard, 4.28.2.

existed why the Church should not ratify (*ratumhabere*) them. In addition, marriage could be contracted clandestinely for reasonable and legitimate reasons.¹⁷⁹ There was some confusion about the meaning of the expression ‘clandestine’, which in reality could mean several things. In his apparatus to the statutes of the Fourth Lateran Council, Johannes Teutonicus (ca. 1170–1245) distinguished between three kinds of clandestinity: firstly if there were no witnesses, secondly if solemnities were not observed and thirdly if celebrated in the wrong place.¹⁸⁰ Hostiensis differentiated between six types of clandestinity. Marriages with few or no witnesses, without nuptial blessing or prior publication of the banns, and marriage during ecclesiastical interdict were valid, albeit illicit. Marriages contracted between minors without proper dispensations or persons bound by religious vows or previous marriages were not only against the law, but also invalid.¹⁸¹ Sixteenth-century Spanish synodal statutes even insisted that parents or guardians had to be present at the ceremony for the union to be deemed public.¹⁸²

Judging by court practice, judges had a broad presumption in favour of marriage and a preference for upholding the *status quo*, unless the court was presented with persuasive proof of the contrary.¹⁸³ In certain regions some ecclesiastical judges seem to have preferred the second public marriage to the first clandestine exchange of *de futuro* vows followed by intercourse, i.e. presumed matrimony. Judges were inclined to favour the subsequent public marriage for fear of collusion between parties. Accordingly, in such conditions French courts allowed proof by the oaths of the principals only if the circumstances did not indicate fraud.¹⁸⁴

Clandestinity continued to flourish despite the canon *Cum inhibitio*, largely because the validity of such unions was never disputed as long as consent could be proven. Therefore, to fight against the evils of clandestinity, bishops all around Europe repeated and extended the

¹⁷⁹ *Decretales ineditae saeculi XII*, 173–174. See also X 4.3.2; Brundage, *Law, Sex, and Christian Society*, 336.

¹⁸⁰ Joannis Teutonicus apparatus, *Constitutiones Concilii quarti Lateranensis*, 258. See also Friedberg, *Das Recht der Eheschliessung*, 72–73; Gottlieb, “The Meaning of Clandestine Marriage,” 51–52; Freisen, *Geschichte*, 150; Erdö, “Eheprozesse,” 256–257.

¹⁸¹ Brundage, *Law, Sex, and Christian Society*, 440–441.

¹⁸² Aznar Gil, “Penas y sanciones,” 159, 166.

¹⁸³ Pedersen, *Marriage Disputes*, 137–138, 210; Helmholz, *Marriage Litigation*, 66.

¹⁸⁴ Vleeschouwers-Van Melkebeek, “Oui, je le veux,” 167, 174–175; Donahue, *Law, Marriage, and Society*, 518–519; Lefebvre-Teillard, *Les officialités*, 178.

penalties for participants of secret marriages issued in their synodal and provincial statutes. For instance, the English canon *Humana concupiscentia*, issued at a provincial council in 1342, was only one instance of a series of synodal and provincial statutes attempting to discourage clandestinity. As the ecclesiastical courts were unable to prevent the practice, the culprits, anyone aiding or abetting them, and the performing priest were put under the major excommunication *ipso facto*. Likewise, any priests disregarding the prescribed procedure of banns and solemnization without special licence from the bishop were excommunicated by the act and suspended for three years. The couple wishing to be reconciled with the Church was prescribed penance, but the validity of the marriage was upheld unless an impediment prevented this.¹⁸⁵ But even illicit solemnizations had different functions: to put pressure on a party objecting to the marriage by presenting him/her with a *fait accompli*, to avoid the discovery of an impediment, or to influence the court to favour a solemnized union when the first was unsolemnized.¹⁸⁶ However, in England mere clandestine marriage was not punishable with automatic excommunication, as the canon of 1342 targeted illicit solemnization.¹⁸⁷

In other parts of the Catholic world, such as northern France and the Low Countries, the officialities fought clandestinity through *ex officio* actions. In England *ex officio* prosecution was not as common as in France and the Low Countries where court procedure was hampered by the automatic *ipso facto* excommunication of all parties participating in clandestine marriages. Namely, Continental synodal and provincial statutes provided for the automatic excommunication of all those participating in clandestine unions: contracting parties, witnesses, and officiating persons. These excommunicates were also to be deprived of church funerals and the witnesses of secret contracts were fined at the church courts, just like the principles.¹⁸⁸ In Spain, all those who

¹⁸⁵ Sheehan, *Marriage, Family and Law*, 50–52, 145–154; Kelly, *Love and Marriage*, 167–168; Pedersen, “Did the Medieval Laity Know,” 120; Pedersen, *Marriage Disputes*, 141–142; Donahue, *Law, Marriage, and Society*, e.g. 252–253, 255, 267, 281–288. For Spain, see Aznar Gil, “Penas y sanciones,” esp. 158–177, and for Flanders see also Vleeschouwers-Van Melkebeek, “Oui, je le veux,” 168. Cf. Donahue, *Law, Marriage, and Society*, 508–509.

¹⁸⁶ E.g. Sheehan, *Marriage, Family and Law*, 49–54.

¹⁸⁷ Donahue, “‘Clandestine’ Marriage,” 317; Donahue, “English and French Marriage Cases,” 345–346; Donahue, *Law, Marriage, and Society*, 32.

¹⁸⁸ Sheehan, *Marriage, Family and Law*, 152; Donahue, “The Canon Law,” 153–156; Donahue, *Law, Marriage, and Society*, 33, 387–389. See also Statuts synodaux de Nicolas

participated in clandestine weddings were to be fined in addition to the ecclesiastical sanctions: the couple, officiating clerics and witnesses. In addition, the cleric was to be suspended for a period ranging from a year to three.¹⁸⁹

Ecclesiastical *ex officio* procedures and visitations concerning suspicious couples, used for unearthing fornicators, also brought clandestine marriages to light. Such prosecution helped the courts detect ‘couples in a twilight zone where sexual relations (perhaps even cohabitation) had commenced but a regular, complete marriage did not in the church’s eye yet exist’. The intervention of the Church either gave the couple the final nudge to the altar or punished the parties for the sexual crime.¹⁹⁰ If the couple was simply living in concubinage or fornicating, they would be forced to abjure each other. In England and Normandy abjuration *sub poena nubendi* was used for such occasions. The couple vowed to accept each other as husband and wife if they ever had intercourse again. In this sense the vow was a conditional future-tense promise, but the couple could not withdraw from it even if they wanted to do so.¹⁹¹ However, although considered both a ‘formidable’ and ‘Draconian’ method of dealing with persistent fornicators, it was questionable not only because of the problems of proof, but especially from the perspective of the freedom to marry. This is probably also why it was ultimately abandoned.¹⁹² As elsewhere, late-medieval English church court records indicate that local ecclesiastical authorities monitored *ex officio* couples and their marital status. Recently immigrated couples, claiming to be married or otherwise living together, could cause suspicions. The inquiry

Gellent 1262, in *Les statuts synodaux II*, 78–79; Statuts synodaux de Guillaume Le Maire 1304, in *Les statuts synodaux II*, 214–217; *Les statuts synodaux IV*, 128–131.

¹⁸⁹ Aznar Gil, “Penas y sanciones,” 160–167.

¹⁹⁰ Donahue, “English and French Marriage Cases,” 345–346; Donahue, *Law, Marriage, and Society*, c.g. 278–296; Vleeschouwers-Van Melkebeek, “Oui, je le veux,” 166–175; Vleeschouwers-Van Melkebeek, “Self-divorce,” 97–98; Vleeschouwers-Van Melkebeek, “Incestuous Marriages,” 77, 87, 90–92; Greilsammer, “Raps de séduction,” 53–54; Lefebvre-Teillard, *Les officialités*, 170–171; Aznar Gil, “Penas y sanciones,” 167–174. Quotation Pooos, “The Heavy-Handed Marriage Counsellor,” 297.

¹⁹¹ For the practice of the English dioceses, see Helmholz, *Marriage Litigation*, 172–181; Helmholz, *Canon Law*, 145–151; Pedersen, “Did the Medieval Laity Know,” 143–145; Pedersen, *Marriage Disputes*, 148–151; Sheehan, *Marriage, Family and Law*, 66–68, 81–83, 161–163; Finch, “Sexual morality,” 264, 267, 269; Donahue, *Law, Marriage, and Society*, 75–76, 79, 81, 116–123, 129, 177–179, 228–229, 261, 269, 288. For Normandy, see Finch, “Sexual Relations,” 245–248, 252.

¹⁹² Helmholz, *Marriage Litigation*, 175–181; Helmholz, *Canon Law*, 151–155; Sheehan, *Marriage, Family and Law*, 67–68.

forced them to comment publicly on the nature of their relationship: denial of marriage meant performing penance, while a claim of marriage had to be backed up by compurgators. Occasionally, the couple could even be forced to provide the court with documents and written proof of the solemnization of their marriage.¹⁹³

In addition, the parties themselves initiated litigation *ab instantia* against each other or third parties wishing the court to recognize or repudiate a clandestine union. Such litigation was predominant in English ecclesiastical courts.¹⁹⁴ Yet, many of the couples that contracted clandestinely intended to solemnize later, making private exchanges of vows only one step in marriage formation. In the archdiocese of Gniezno in Poland, almost nine out of every ten disputes relating to the validity of the conjugal bond involved clandestine and non-ecclesiastical marriages. The figures, however, are distorted because private marriages were more likely to end up in court.¹⁹⁵ The stereotype clandestine marriage was different in France and the Low Countries than in England, where most couples exchanged marriage vows in the present tense. On the Continent the betrothal and words in the future tense were followed by intercourse. The long-term trend of dwindling clandestine present-tense marriage litigation observed by Charles Donahue appeared earlier and more rapidly in the ecclesiastical courts of France and the Low Countries than in England. This he has partly attributed to the Church's actions against unsolemnized marital unions.¹⁹⁶ There are some indications, however, that not all French late-medieval clerics observed the requirement to publish the banns before solemnization: some churches claimed special exemptions, while many clerics were ready to forget the law for a financial consideration.¹⁹⁷

In some regions like Flanders the clandestine vows were to be followed by solemnization or repetition of the vows in the presence of a priest within eight days. Another alternative was to notify the bishop

¹⁹³ Poos, "The Heavy-Handed Marriage Counsellor," 294–296.

¹⁹⁴ Sheehan, *Marriage, Family and Law*, 61–62; Helmholz, *Marriage Litigation*, 28–30; Donahue, "The Policy," 266–267; Donahue, *Law, Marriage, and Society*, esp. chs. 2–6.

¹⁹⁵ Brozyna, *Ecclesiastical Courts*.

¹⁹⁶ Donahue, "The Canon Law," 147–153; Gottlieb ("The Meaning of Clandestine Marriage," 80) for France, and Sheehan (*Marriage, Family and Law*, 55) for England. See also Finch, "Parental Authority," esp. 193–201 and Donahue, "Clandestine Marriage."

¹⁹⁷ Statuts synodaux de Nicolas Gellent 1274, *Les statuts synodaux II*, 122–123; Turlan, "Recherches," 507; Lefebvre-Teillard, *Les officialités*, 166–167, 177.

or archdeacon within fifteen days or a month of the clandestine marriage.¹⁹⁸ Those couples who admitted or were proven to have contracted clandestinely were ordered by the courts to solemnize their unions within a certain time, usually forty days, as an alternative or in addition to a fine. The latter seems to have been the practice in France. Even a person, claiming the existence of a clandestine contract but being unable to prove it because of the other party's denial, was fined for the admitted clandestinity, while the latter escaped the penalty.¹⁹⁹

In England the practice varied from one diocese to another. In Ely the court pronounced secretly contracted couples married, but ordered them to solemnize in church, occasionally within a specified period. By contrast, in Rochester the couple risked a public whipping, especially after initiated sexual relations. In later-medieval London, couples were to solemnize and possibly even perform penance for their fornication.²⁰⁰ Canon law had even provided one party with the recourse of suing the other for refusal to solemnize the marriage.²⁰¹ German ecclesiastical synods and courts usually distinguished between 'incomplete' secret marriages in which solemnization was lacking and clandestine unions contracted by minors against the wishes of their parents. In former cases, the couple were punished only if they refused to solemnize publicly, while the parties of the latter types could expect excommunication in addition to the secular penalty of disinheritance.²⁰²

On occasion, clandestine occult exchanges of consent were deliberate, as the reading of the banns would have led to the unearthing of an impediment between the couple, commonly a prior contract, affinity or consanguinity. The Church had taken a stricter stance on couples marrying knowing of an impediment, however. At the Council of Vienne in 1311 Pope Clement V (1305–1314) had declared such

¹⁹⁸ Vleeschouwers-Van Melkebeek, "Oui, je le veux," 166–169; Vleeschouwers-Van Melkebeek, "Self-divorce," 90; Donahue, *Law, Marriage, and Society*, 387–388; Hall, *The Arnolfini Betrothal*, 30–31; Greilsammer, "Rapts de séduction," 53.

¹⁹⁹ For France, see Lefebvre-Teillard, *Les officialités*, 170–172, 176–177; Molin – Mutembe, *Le rituel*, 49; Gottlieb, "The Meaning of Clandestine Marriage," 58–59, 61, 63–67; Flandrin, *Sex in the Western World*, 50–53; Donahue, "The Canon Law," 148; Finch, "Sexual Relations," 246–247, and for Flanders see Vleeschouwers-Van Melkebeek, "Oui, je le veux," 166; Vleeschouwers-Van Melkebeek, "Self-divorce," 90.

²⁰⁰ Kelly, "Clandestine Marriage," 440; Kelly, *Love and Marriage*, 170–171; Sheehan, *Marriage, Family and Law*, 49, 62, 71; Wunderli, *London Church Courts*, 88; Finch, "Sexual Relations," 267. See also Sheehan, *Marriage, Family and Law*, 151.

²⁰¹ Wunderli, *London Church Courts*, 120; Lefebvre-Teillard, *Les officialités*, 153–154.

²⁰² Harrington, *Reordering marriage*, 179.

couples excommunicated *ipso facto*.²⁰³ The circumstances in England, for example, give the impression that banns were ‘an effective weapon against the abuses to which the clandestine union lent itself.’²⁰⁴ This certainly was one of the main reasons for publicizing the intention to marry. As for France, clandestine marriage was chosen either in order to render the previous engagement to another person effectively null and void or in order to avoid the discovery of an impediment of consanguinity or affinity. Betrothals followed by consummation especially facilitated divorce and bigamy.²⁰⁵ By contrast, in the cases of bigamy in late fifteenth-century Troyes, the latter unions especially were public and solemnized. In the Augsburg records also, the former union was usually clandestine and the second a ‘*matrimonium publicum*’.²⁰⁶

In many dioceses clandestine marriage was considered such a grave sin that only the bishop of the diocese could grant absolution for it. In central France, wedding rituals contained a formula for the absolution of the excommunication for couples that had contracted clandestinely.²⁰⁷ Especially where solemnization was common, it was a mortal sin to marry so that the union could be doubted and bigamy was possible. But in case of acceptable reasons (e.g. disparity of the couple) for the omission of some formality, the affair was sinless. In addition, canonists thought that it was acceptable for potentates who ‘publicly summoned’ their wives from distant regions and whose unions were usually carefully planned in advance, to omit the banns. Bishops could issue dispensations from banns and solemnization, a practice becoming increasingly popular in certain regions in the course of the Middle Ages: in fifteenth-century England, the clergy complained that such dispensations were common and led to abuse.²⁰⁸

The problem of proof came up frequently in clandestine marriages that came to court, because such unions were often disputed by one party, more commonly the man. In the Low Countries and France if

²⁰³ Clem. 4.1.1.

²⁰⁴ Sheehan, *Marriage, Family and Law*, 50.

²⁰⁵ Lefebvre-Teillard, *Les officialités*, 155, 169, 175.

²⁰⁶ Gottlieb, “The Meaning of Clandestine Marriage,” 67; *Ein Urtheilsbuch der geistlichen Gerichts*, 15–18.

²⁰⁷ Molin – Mutembe, *Le rituel*, 57. See also Trexler, *Synodal Law*, 63–64.

²⁰⁸ *Love & Marriage*, 74; Kelly, “Clandestine Marriage,” 441; Kelly, *Love and Marriage*, 173–176; Brucker, *Giovanni and Lusanna*, 73–74; Brundage, *Law, Sex, and Christian Society*, 442–443; Sheehan, *Marriage, Family and Law*, 51, 153–154; Brozyna, *Ecclesiastical Courts*. Cf. Statuts synodaux de Nicolas Gellent 1272, *Les statuts synodaux II*, 110–111.

no proof (witnesses, circumstantial evidence or common fame) was available, the defendant was made to swear a decisive oath (*juramentum veritatis*) that no marriage vows had been made. A successful purgatory oath was sufficient to lead the court to rule for the non-existence of marriage.²⁰⁹ Without witnesses testifying to the words of marriage expressing the parties' intention, clandestine marriage could be indistinguishable from concubinage. This tended to weaken the notions of indissolubility and permanence, which the Church had for centuries striven to have respected.²¹⁰

Before the Council of Trent, the Church attempted to counteract at a local level the libertarian matrimonial regime it had helped to create by repeatedly condemning clandestine marriage and requiring solemnization *in facie ecclesiae*. After the famous Tridentine decree *Tametsi* of 1563, insisting on certain formalities for the validity of a conjugal union, the question of proof was partially laid at rest. Thenceforth marriage had to be contracted in the presence of two witnesses and the officiating priest. After the mutual declarations of consent, the priest was to pronounce that he bound the couple together in marriage (*Ego vos in matrimonium coniungo*). This emphasized the priest's role in joining the couple together.²¹¹ *Tametsi*'s requirements of publicity and ecclesiastical participation solved some problems, but did not eliminate them. The old tradition of binding private promises was hard to overcome and seductions under the promise of marriage regularly occurred, leaving secular legislation to fill the gaps of ecclesiastical law by penalizing seducers.²¹²

²⁰⁹ Vleeschouwers-Van Melkebeek, "Oui, je le veux," 167–175; Vleeschouwers-Van Melkebeek, "Self-divorce," 90–92; Lefebvre-Teillard, *Les officialités*, 171–175.

²¹⁰ Brundage, "Concubinage and Marriage," 5–8; Sheehan, *Marriage, Family and Law*, 40, 65, 76.

²¹¹ Molin – Mutembe, *Le rituel*, 127–128, 132; Gaudemet, *Sociétés et mariage*, 438–439; Harrington, *Reordering marriage*, 94–97. See also Ritzer, *Formen, Riten*, 334.

²¹² Lombardi, "Intervention," 145–147, 150–155; Saffley, *Let No Man Put Asunder*, 79, 89–90.

2.4 *The Paradoxical Status of Consummation in Canon Law*

Gratian and the Consummation Theory: The Harmonization of Discordant Traditions

Matrimony is at the intersection of two domains, the sacred and the secular, the pure and the impure, the licit and the illicit. As the sexual act plays a central role in marriage, the institution cannot but be interconnected with sexuality and procreation. This is why marriage is on the border between the supernatural and the natural.²¹³ Because of this, the Church Fathers and early medieval theologians had difficulties elevating matrimony into one of the seven sacraments, but the line was drawn by accepting consent as the constituting legal act.

Jerome and later, in the eleventh century Peter Damian represented the Church's influential extremely ascetic and virulently antisexual phalanx. Both condemned the sexual, earthly aspects of marriage in such vehement and disgusted terms that their embarrassed colleagues had to write apologies in defence of the institution. Though bordering on Manicheanism and heresy, the texts of both Jerome and Peter Damian were frequently copied and read in the Middle Ages.²¹⁴

Clerics advocated that newly-weds imitate the apocryphal story of Tobias and Sara, praying and fasting for three days and nights before consummating their union so that there was no sinful lust and haste for carnal pleasure in the sexual marital act, but reverence for God. In exemplary stories couples were praised for not rushing into the nuptial bed 'with unbridled desire'. First both took communion before the marriage feast, spent a good part of the following three days and nights in prayer and only then, 'with great sighs and devotion and fear of God they consummated it'. Separating the nuptial blessing temporally from the carnal act of consummation was important.²¹⁵ No wonder then that

²¹³ Duby, *Love and Marriage*, 4.

²¹⁴ Clark, "Adam's Only Companion," 18–23; Noonan, *Contraception*, 100–102; Brooke, *The Medieval Idea*, 59–63, 70–74, 135–136; Duby, *The Knight, the Lady and the Priest*, 27–30; Brundage, *Law, Sex, and Christian Society*, 84–86, 90–91, 101, 188–189, 215–216. On heretical attacks on marriage and clerical counterattacks, see Noonan, *Contraception*, 107–126; Levin, *Sex and Society*, 44–49, 70–74.

²¹⁵ Reynolds, *Marriage*, 335–337; Brooke, *The Medieval Idea*, 29–30; Klapisch-Zuber, *Women, Family and Ritual*, 190; Westermarck, *The History II*, 547–563; Gustavsson, "Ståta brud," 19.

the consent, not consummation, came to form the pivot of marriage formation and sacramentally complete matrimony.²¹⁶

Eleventh- and twelfth-century heretic sects, e.g. the neo-Manichean Cathars, attacked the institution of marriage and especially its carnality: a spiritual union was acceptable, but the physical union was loathsome. It was sacrilegious to try to sanctify a worldly thing like marriage, and priests should disassociate themselves from weddings that led people to the nuptial bed and sex. As all sexual activities were from the Devil, continence was the only means to salvation. Consequently, conception and pregnancy were works of Satan, residing in the pregnant woman's belly. As mentioned above, some of these notions were not far from the ideas of rigorous and purist ascetics like Peter Damian, but the heretics were even more radical in their condemnation of matrimony.²¹⁷

These sectarian attacks forced many reluctant churchmen to defend the institution, for example, by emphasizing the benefits of goodness of marriage and by giving several reasons for commending matrimony in their sermons. God had instituted marriage in Paradise at a time when there was no sin, and Christ himself had attended the wedding of Cana and performed the miracle of turning water into wine there. While originally instituted for procreation, after the Fall it also existed for the avoidance of sin. Others argued that the majority of mankind was destined to the marital order, which though inferior to virginity, had nevertheless been divinely ordained. Matrimonial desire and pleasure were to be controlled as marital embraces were sinful, but venially so. The divine commandment to multiply was to be fulfilled. Moreover, parish priests were told to praise marriage zealously and emphasize it as an antidote for sexual crime.²¹⁸ Marriage provided theologians also with a powerful symbol. The sacrament of matrimony was compared to the union between God and human nature, between Christ and the

²¹⁶ Duby, *Love and Marriage*, 11; Brundage, *Law, Sex, and Christian Society*, 262, 268.

²¹⁷ Noonan, *Contraception*, 179–193; Duby, *The Knight, the Lady and the Priest*, 107–112.

²¹⁸ On the Sacraments of Hugh of Saint Victor, 2.11.2–3, 325–327; Sententiae in IV libris distinctae of Peter Lombard, 4.26.1–5; *Medieval Marriage Sermons*, 3, 11, 152–153, 300–301; Kelly, *Love and Marriage*, 248–261; Duby, *The Knight, the Lady and the Priest*, 112–116; Noonan, *Contraception*, 196–198; Reinhardt, *Die Ehelehre*, 41–53; Brundage, *Law, Sex, and Christian Society*, 186–187; 82, Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 207. See also *De septem sacramentis*, cap. VII, 200.

human soul, and to the spiritual marriage of Christ and a person who had taken religious vows.²¹⁹

The most famous pre-Gratian representative of the so-called consummation theory had been Archbishop Hincmar of Reims in the ninth century. Hincmar discussed the question particularly in relation to a marriage case in the years 857–860 between Stephen, a count's son, and the daughter of Count Raymond of Toulouse. According to him, the betrothal (*desponsatio*), the agreement between the two families, in which the woman's father gave her to her husband, was one of the crucial formalities of marriage. The husband had to endow her with a dower and the nuptials had to be publicly celebrated.²²⁰ The betrothal, provided that it had been preceded by a lawful suit and parental authority had been upheld, initiated the marriage (*matrimonium initiatum*), but sexual intercourse completed it and finally made it into a sacrament. Not all weddings made a conjugal bond, Hincmar argued, if consummation (*commixtio*) did not follow. Nor could a woman be considered married if the sacrament between Christ and the Church, 'the nuptial mystery', i.e. consummation, had not taken place. Therefore, separation and remarriage were possible if antecedent impotence or affinity hindered consummation.²²¹ In his attempt to uphold the validity of the marriage of Mary and Joseph, Hincmar did not claim that all unconsummated marriages were dissoluble, but rather that the wedding makes the union indissoluble. Yet because matrimony was directed to consummation, the union could be broken if consummation was impossible. But, even the Council of Verberie (in the 750s) had allowed divorce with a right to remarry in the event that a marriage had been unconsummated.²²²

The conventional notion is that consummation played an important role in the Germanic notions of matrimony and that Hincmar was influenced by the tradition.²²³ But doubts have been raised: the role of consummation in marriage in the Germanic laws is unclear, as the texts do not contain any reference to it. Even if consummation had a central part in the bedding (*bîlage*) of the Early Middle Ages, it is speculative to suppose that it was necessary as a perfective factor. Instead, Hincmar

²¹⁹ *Medieval Marriage Sermons*, 100–103, 110–111, 210–211.

²²⁰ Daudet, *Études sur l'histoire*, 122–134; Duby, *The Knight, the Lady and the Priest*, 32–35; Gaudemet, *Sociétés et mariage*, 213–214.

²²¹ Gaudemet, *Sociétés et mariage*, 214–216; Reynolds, *Marriage*, 353–359.

²²² Reynolds, *Marriage*, 359–361; Wemple, *Women in the Frankish Society*, 77.

²²³ E.g. Brundage, *Law, Sex, and Christian Society*, 136; Freisen, *Geschichte*, 116, 141.

was trying to combine the internally discordant aspects of consummation and sexual union of the spouses with the rest of an ecclesiastical dogma that had its roots in Judaism, not either in Roman or Germanic culture.²²⁴ This was also the intention of Gratian.

When Peter Lombard wrote his *Sentences* in the 1150s, the Italian law teacher Gratian had already written the first version of his *Concordia discordantium canonum* (Concord of the discordant canons), better known as the *Decretum Gratiani*. Unlike Peter Lombard, Gratian's intention was to create harmony in the chaos of different papal letters, canons of various councils, patristic, theological and Biblical texts. His method was based on making distinctions and thus ironing away differences into a compromise.²²⁵ Certain representatives of the school of Laon and later Peter Abelard had used Gratian's method of juxtaposing opposing texts or authoritative arguments and trying to harmonize them. Using this method it was easy to conclude that consent was the main element in marriage formation and that consummation perfected it.²²⁶ Thus armed, Gratian came to represent the view that the necessary stages of marriage were consent and subsequent consummation. In his collection of various canons, Gratian discovered texts of two kinds. Some stressed the role of consent and the asexual union of Joseph and Mary, while others saw physical consummation (*commixtio sexuum*) as the necessary finalizing legal act of marriage formation.

Gratian believed that betrothal (*desponsatio*) initiated marriage, while sexual intercourse, symbolizing the sacrament of Christ and his Church, perfected it.²²⁷ Referring to those Patristic passages that insisted that the agreement of the wills, not sexual intercourse, made marriage, Gratian explained that these passages were to be interpreted so that no marriage took place without both elements coming together. On the one hand, intercourse without the will to contract marriage, or defloration of a virgin without a conjugal agreement, did not make a marriage. But,

²²⁴ Reynolds, *Marriage*, 85–86, 350–353; Reynolds, “Marrying,” 6–7.

²²⁵ Winroth (*The Making of Gratian's Decretum*, esp. 122–130, 136–145, 189–195) has proposed that the *Decretum*, as we know it today, was a collective effort of at least two persons. The first redaction was the work of *magister* Gratian, while the second redaction was made by another author (or authors), Gratian's student(s), who had also studied Roman law. For a brief summary on Gratian's method and importance see also Brundage, *Medieval Canon Law*, 47–49.

²²⁶ Reinhardt, *Die Ehelehre*, 88–93.

²²⁷ C. 27 q. 2 c. 35–37; Gaudemet, *Sociétés et mariage*, 380–383. See also Brundage, *Law, Sex, and Christian Society*, 235–240.

on the other hand, if there was the will to marry and a conjugal pact, then through the sexual act the woman was said to marry the man or celebrate the wedding (*nubere viro, uel nuptias celebrare*).²²⁸ He distinguished between lawful marriage (*coniugium legitimum*) and unlawful marriage as well as between completed (*coniugium ratum*) and uncompleted marriage. A lawful marriage was contracted in accordance with the provincial customs and legal institutions, for example when the wife's parents gave her away, the groom endowed her and the priest blessed the union. An unlawful (*non legitimum*) marriage was contracted by affection only (*solo affectu*) in contempt of all solemnities, but such a marriage could nevertheless be completed. A completed marriage bond was firm and inviolable because of the prohibition of divorce.²²⁹

Gratian needed to reconcile the virginal marriage of Mary and Joseph to his scheme of marriage. Their matrimony was also perfect, as Gratian tried to show by pointing out that the Bible often talked about a wife (*coniux*) even if the woman was yet only betrothed (*sponsa*).²³⁰ When she had been handed over to the groom and led to his house (*tradita et in usum deducta*), she was called married. Gratian also observed that the marriage of Mary and Joseph contained the three Augustine goods of marriage: there was a child, Christ, there was fidelity and, lacking divorce, a sacrament. Joseph was called Jesus' father, not because he had fathered him, but because he had cared for him.²³¹ Gratian did not deny outright that consent made matrimony, but he posed the question whether this consent was for the purpose of cohabitation, sexual intercourse or both. If the first sufficed, then brother and sister could contract marriage, if the second was necessary, there was no marriage between Mary and Joseph as Mary had vowed to remain a virgin. She only made this plan in her heart instead of making a public a vow of virginity. Yet in subjecting herself to the divine plan she gave her consent to sexual intercourse, not because she wanted it but in order to obey God. After the birth of Jesus, however, both Joseph and Mary made vows of virginity and remained chaste. Thus the consent to cohabit and spend their lives together made them married.²³²

²²⁸ C. 27 q. 2 d. c. 45.

²²⁹ C. 28 q. 1 d. c. 17; Brundage, *Law, Sex, and Christian Society*, 288.

²³⁰ See also Ritzer, *Formen, Riten*, 10.

²³¹ C. 27 q. 2 c. 10, C. 27 q. 2 c. 12, C. 27 q. 2 c. 38, C. 27 q. 2 d. c. 39. See also Levin, *Sex and Society*, 61.

²³² C. 27 q. 2 c. 2–3; Gold, "The Marriage of Mary and Joseph," 103–107.

Following Gratian, *magister* Rolandus, Paucapalea and Rufinus of Bologna (all active in the late 1150s) also accepted the fundamentals of Gratian's theory; namely, that the indissoluble marriage required both consent and consummation. Both Rolandus and Paucapalea considered marriage to be indissoluble after consummation, but Rufinus developed the consummation theory further.²³³ Rufinus acrimoniously accused the Parisian theologians of envy, arrogance and forsaking Gratian's sacred distinction. Having described the difference between consent in the future tense and consent in the present tense, he contemptuously rejected this theory. The competitive spirit between Bologna and Paris is clearly present in his passages in which he also accused the Parisians of failing to name the authoritative texts of the sacred fathers they had used to 'concoct their new mess'. Rufinus then moved on to explain and justify the Bolognese view, distinguishing between initiated, consummated and completed (*ratum*) marriages. An initiated marriage contained the *desponsatio*, the consummated marriage the *desponsatio* and consummation, and a completed marriage both of these elements, but in addition it was a legitimate union between two persons who could be lawfully united (*in personarum legitimarum legitima coniunctione*). For example, two consanguineous relatives could have a consummated, but not a completed marriage.²³⁴

Rufinus went on to distinguish between two complementary but distinct sacraments of marriage: one arising from betrothal (*desponsatio*), the other from consummation. Betrothal represented a sacrament between the human soul and God, but as the soul could be guilty of apostasy, this first sacrament was violable. The second sacrament, that of Christ and the Church, was unbreakable (*irrumptibile*) and hidden in carnal intercourse. Just as husband and wife became one flesh, it was believed that Christ and the Church became one flesh and one person in the virginal womb.²³⁵ As for Mary and Joseph, he vigorously rejected the Parisian notion that present-tense consent between them perfected their marriage. Rufinus accepted Augustine's authority that the union was perfect and complete: as there was no divorce, the sacrament of

²³³ Donahue, "Johannes Faventinus," 181–183; Gaudemet, *Sociétés et mariage*, 283–284, 386–387; Brundage, *Law, Sex, and Christian Society*, 262–264.

²³⁴ *Summa decretorum* of Rufinus of Bologna to C. 27 q. 2, 440–441; Weigand, *Die bedingte Eheschliessung*, 128–129; Gaudemet, *Sociétés et mariage*, 388–389.

²³⁵ *Summa decretorum* of Rufinus of Bologna to C. 27 q. 2, 441–442; Weigand, *Die bedingte Eheschliessung*, 129–130; Gaudemet, *Sociétés et mariage*, 389–390, 436.

Christ and the Church was present. As Mary and Joseph had never had intercourse, their marriage had become firm and perfect in the betrothal. They had become inseparably joined by their souls and shared everything but their flesh, and so, by its exceptional sanctity, their betrothal could be called the sacrament of Christ and the Church. This special privilege did not form a common rule.²³⁶

Admittedly the consummation theory was at its weakest in trying to justify the perfection of the marriage of Mary and Joseph, inasmuch as consummation was required it. Neither Rufinus's special privilege, nor Gratian's consent to intercourse vindicated the marriage of the holy couple in a particularly convincing way. On the other hand, the consummation theory was at its strongest in explaining why an unconsummated marriage could be broken as a result of the taking of vows of entry into a religious order, impotence or for some other reason. These were issues which the consent theory could not easily fit in with their doctrine. Even after the consensual marriage of the Parisian school was largely adopted as the basis of Catholic marriage dogma, the distinctions of the consummation theory between initiated, ratified, consummated and thus perfected marriage (*matrimonium initiatum, ratificatum, consummatum et perfectum*) continued to live on in medieval parlance although the exchange of words in the present tense ratified the union.²³⁷

Although ascetics like Peter Damian condemned as absurd and insignificant the view that marriages were made complete by nuptial intercourse,²³⁸ it was tricky to reconcile the Biblical texts with the consent theory. The Bible spoke of matrimony as occurring when a man and a woman became one flesh by sexual intercourse as Paul had indicated quite explicitly. While the Church Fathers gladly played down the role of the sexual union in marriage, they were unable to completely suppress the Jewish legacy of marriage, which focused on becoming one flesh through the sexual union.²³⁹ Moreover, the role of sexual relations in establishing a matrimonial bond had support in secular perceptions as well. As a result, canon law reached a compromise between the two.

²³⁶ *Summa decretorum* of Rufinus of Bologna to C. 27 q. 2, 444–445.

²³⁷ See also *Medieval Marriage Sermons*, 184–187, 212–217, 302–303, 306–307, 312–315.

²³⁸ Gaudemet, *Sociétés et mariage*, 217–218.

²³⁹ Noonan, *Contraception*, 30–32; 40–41; Reynolds, *Marriage*, xxiii, xxv, 331–334, 338–339.

The Uncertain Role of Consummation in Classical Canon Law

The consummation of matrimony could have lost its legal relevance in marriage formation when the decretals of Alexander III made the consent of the parties the sole constituting element of marriage. Yet this was not to be the case, although Innocent III abrogated local customs contrary to the Alexandrine doctrine. In one of his decretals, for example, he overruled the custom of Modena that engagements *de praesenti* were indissoluble only after consummation, and that before consummation either party could validly exchange present-tense consent with another.²⁴⁰

Despite the ascendancy of the consensualists over the discarded consummation theory, the triumph was hardly complete as the Church simply could not relegate the role of sexual relations to the scrap heap. 'At least two factors stood against the theory of consent as the *only* grounds for marriage: popular opinion, which always imagined sexual relations to be part of marriage, and Scriptural texts that referred to the becoming of "one flesh" in the sex act, and this on the analogy of Christ's union with the Church'.²⁴¹ The leading proponents of the consent theory were theologians, who may have been more interested in creating a pure and idealistic system than in making one that would be functional—unlike canonists who had to take the enforceability of the system into account.²⁴²

Hard-line consensualists like Peter Lombard had difficulties in reconciling texts, allowing the dissolution of marriage on the grounds of antecedent impotence, to their doctrine. The rationale for these grounds remained unexplained. In fact, the Lombard preferred that the couple stayed together, living as brother and sister despite the impotence of one spouse, but accepted the dissolution if the 'healthy' spouse wanted to become a parent.²⁴³ As the canonical dogma came to accept antecedent impotence or frigidity as an impediment of marriage, this distorted and warped the whole ecclesiastical marriage doctrine. Moreover, sexual intercourse in itself created a permanent, though non-marital, bond

²⁴⁰ X 4.4.5; Rousseau, "The Spousal Relationship," 93.

²⁴¹ Clark, "'Adam's Only Companion,'" 30–31. Italics original.

²⁴² Gold, "The Marriage of Mary and Joseph," 110.

²⁴³ Sententiae in IV libris distinctae of Peter Lombard, 4.34.2; Summa sententiarum of Hugh Saint Victor, 7.17, 7.20; Brundage, "Impotence," 413–415.

between the parties, which has been understood to be the rationale behind the impediment of affinity as understood by the Church.²⁴⁴

Dissolution was still possible if consent had been exchanged, but the union had not been consummated. In some cases Alexander III had permitted unconsummated marriages to be dissolved because of supervenient affinity, possibly even supervenient impotence, while Urban III (1185–1187) had been prepared to dissolve an unconsummated present-tense marriage because of supervenient leprosy. However, Innocent III's interpretation was more restrictive. The possibility to dissolve an as yet unconsummated marriage, even unilaterally through the entry of either spouse into a religious order, came to be the only lasting exception of the rule, apart from impotence.²⁴⁵ This not only made the ecclesiastical dogma internally inconsistent, but also caused confusion in some early commentators.

Later in the Middle Ages popes and canonists developed a dogma that permitted the pope in special cases to dissolve valid marriages that had not yet been consummated. Alexander III had issued a decretal in which long spousal absence had enabled the other to receive a dispensation to remarry, provided that the union had not been consummated. However, this had remained an isolated incident. In the following centuries many canonists came to hold that the pope had the power to dissolve unconsummated marriages.²⁴⁶ In the fifteenth century, the papacy began to make practical use of the power that canonists had long ago granted them in theory. At least one Swedish woman applied to Rome to have her conditional present-tense marriage dissolved although the condition had not been fulfilled.²⁴⁷ This practice was inconsistent with the canonical doctrine that consent alone made marriage, but it throws light on the strong secular legal tradition that consummation was an essential and concrete stage in making marriage. To some degree the Church had taken one step back and accepted this reality.²⁴⁸

²⁴⁴ Brundage, "Impotence," 423; Reynolds, *Marriage*, 334.

²⁴⁵ *BD*, doc. 48, 43–44; Donahue, "The Policy," 252, note 1; Donahue, "The Dating," 96, 105–109.

²⁴⁶ Brundage, *Law, Sex, and Christian Society*, 376–377; Brundage, "Impotence," 416–417; Donahue, "The Policy," 252, note 1; Sturcken, "The unconsummated marriage," 185, 188–193.

²⁴⁷ *Frühe urkundliche Belege*, RA, Afskrifter ur Vatikan-arkiver, Supplikor 1441–1475 (Pius II, 9.5.1460); Noonan, *Power to Dissolve*, 130–133; Erdö, "Eheprozesse," 270.

²⁴⁸ Brundage, *Law, Sex, and Christian Society*, 504–505; Brundage, "Impotence," 422.

In the famous decretal *Veniens ad nos*, Pope Alexander III ruled that the taking of future-tense vows, followed by intercourse, constituted a valid marriage that could not be dissolved by later present-tense marriage to another. Later decretals confirmed this rule, but clarified that attempted intercourse did not create the bond.²⁴⁹ Even when such union were followed by a solemnized and consummated present-tense marriage, the first consummated betrothal was indissoluble. Future words followed by intercourse became known as presumed matrimony (*matrimonium praesumptum*).²⁵⁰ Presumed matrimony, appearing in Huguccio's *Summa* on the *Decretum*, represented a partial compromise with the consummation theory, which in turn appears to have been a concession to the realities of every-day life and secular legal practice, which the consummation theory had taken into consideration in the first place. The rule that future-tense exchange of consent accompanied by sexual intercourse constituted matrimony was the practice in certain Italian regions and, all in all, probably corresponded better to popular perceptions of marriage.²⁵¹ In addition, it liberated the ecclesiastical courts from having to establish the exact tense of the words of the contract. All children born after the betrothal of the parents would be legitimate without further ado, but whether this perception was the reason for or the consequence of the doctrine of presumed marriage cannot be determined here.²⁵²

Intercourse also had relevance for conditional marriage vows. If the couple had contracted conditionally, e.g. promising to contract marriage if their parents consented,²⁵³ the union was postponed while the fulfillment of the condition was pending. The marriage became indissoluble when the condition was fulfilled. If, however, the couple had intercourse before the condition had been fulfilled, the parties were interpreted as having waived the condition. Thus, intercourse had transformed the engagement into matrimony, as with the presumptive marriage.²⁵⁴

Thus, the Church had retreated somewhat from a pure consensualist marriage doctrine and had given consummation a role both in supple-

²⁴⁹ X 4.1.15; X 4.1.30–32.

²⁵⁰ X 4.1.30.

²⁵¹ Brundage, "Concubinage and Marriage," 8–9; Donahue, "The Dating," 111; Brundage, "Impotence," 422.

²⁵² E.g. Smith, "Marriage Processes," 56–57.

²⁵³ On conditional marriages, see e.g. Weigand, *Die bedingte Eheschliessung*; Helmholz, *Marriage Litigation*, 47–57.

²⁵⁴ See esp. Weigand, *Die bedingte Eheschliessung*.

menting the consent theory and contributing to the indissolubility of the union. The distinction between the words of consent given in the present or the future tense complemented the transformation of an engagement or conditional engagement followed by intercourse into indissoluble marriage. As an unconsummated marriage could always be dissolved by taking religious vows or by papal dispensation for various reasons later in the Middle Ages, in reality consummation became an element that contributed to the indissolubility of matrimony, just as it had always been in popular thought.²⁵⁵

2.5 *Summary*

Canon law courts all around Catholic Europe followed papal rulings and the canonical minimum standard to the effect that mutual consent made marriage regardless of regional custom or secular law. In England the late-medieval laity ‘whole-heartedly’ accepted the ecclesiastical monopoly on marriage. Although occasional informal attempts to resolve marriage disputes were made outside court, such settlements were made *ad hoc*.²⁵⁶ Unquestionable approbation was less marked on the Continent, where kings and towns were more prone to challenge the ecclesiastical jurisdiction. For example, many late-medieval German municipal statutes tried to prevent their citizens from pursuing matrimonial causes at ecclesiastical courts by forbidding this in their statutes or by penalizing false accusations at church courts by fines or loss of citizenship.²⁵⁷

By 1200, ecclesiastical marriage doctrine had largely repudiated the consummation theory propounded by Gratian. The Church did not distinguish between performing an engagement and marriage other than by the use of words of consent exchanged in the present tense or in the future tense. This focused the attention in marriage litigation on consent, ‘on which witnesses may speak the truth, rather than on consummation, on which, perhaps, they rarely can or will’.²⁵⁸ In the light of later litigation on the words of consent, this is an optimistic

²⁵⁵ Brozyna, *Ecclesiastical Courts*; Wendel, *Le mariage*, 28–29; Ribordy, *Faire les noces*, 132–137. For the opinion of the Orthodox Church, see Levin, *Sex and Society*, 87–88.

²⁵⁶ Pedersen, *Marriage Disputes*, 118.

²⁵⁷ Frensdorff, “Verlöbniß,” 309–311; Harrington, *Reordering marriage*, 129–134; Roper, “Going to Church,” 70.

²⁵⁸ Brooke, *The Medieval Idea*, 172.

exaggeration. The ascendancy of the consent theory signified that a marriage was made indissoluble when a couple, free from any impediment to marry, exchanged present-tense marriage vows even if they never consummated their union. The Church's redefinition of marriage did not necessarily correspond to the popular perception. Many people continued to consider that either consummation or solemnization was needed to make consent fully binding.²⁵⁹

Despite the formlessness and emphasis on the free consent of the parties, at least in theory liberating matrimony from family coercion, the freedom of marriage became somewhat cumbersome for the Church. By permitting clandestine and informal unions the Church opened a Pandora's box of abuses. For dogmatic reasons, the Church refused to close it while attempting to limit the damages, especially by its conciliar, provincial and synodal legislation. Medieval canonical court records bear witness to the criticism that the focus on consent 'often enough had the effect of legitimizing unpremeditated exchanges of marital intent uttered amid the heat and passion of adolescent sexual gropings'.²⁶⁰ Seducers took advantage of the formless contract's obvious problems of proof. Especially men could demonstrate excellent knowledge of canonical matrimonial dogma in order to bed the woman while evading marriage.²⁶¹

The informality of the exchange of consent led to clandestine marriage. The informality, in turn, was linked to an individualistic theory of marriage that was both introduced and even endorsed by the Church. The Church thus 'made contracting marriage easy, [but]...proving them difficult'. Bigamy, incest, seduction and perjury rank high on the list of evils unleashed by the ecclesiastical dogma, inspired by the highest of ethical goals.²⁶²

Worse from the Church's perspective, the validity of clandestine marriages and the formlessness of marriage could frustrate the ecclesiastical attempts to control the impediments of marriage. Therefore, although adhering strictly to the exchange of consent as the only necessary factor for a valid marriage, the Church's policy throughout Europe increasingly moved toward solemnization. Ideally, it combined both aspects: the free exchange of consent could be verified by the Church, the officiating

²⁵⁹ Helmholz, *Marriage Litigation*, 31–33.

²⁶⁰ Brundage, "Playing by the Rules," 23.

²⁶¹ E.g. Pedersen, "Did the Medieval Laity Know," 134–135. See also X 4.1.26.

²⁶² Helmholz, *Marriage Litigation*, 61–66. See also Levin, *Sex and Society*, 98, 100.

priest being the guarantor of the freedom of marriage. In addition, the preceding reading of the banns ensured the publicity necessary to determine the existence of impediments unknown to the parish priest himself. The policy also explains why the ecclesiastical courts routinely ruled that clandestinely contracted present-tense marriages had to be solemnized. Solemnization *in facie ecclesiae* was to become the norm, and it was eventually incorporated into local marriage customs.

Young people in medieval England and Bohemia chose their intended spouses for themselves through spontaneous courting and daily interaction although some persons, especially women, decided to consult their friends or kin.²⁶³ Parental consent has been identified as part of normal English and French marriage procedure, even in those cases in which the match was based on the inclination of the parties themselves. Women often made their consent conditional on the consent of their parents, master or kinsmen. Although this was sometimes only a courtesy ritual and the parental permission formulaic, there was a genuine expectation that a young woman would be willing to abide by her father's decision. The normal result of a proposed marriage resisted by the parents was that it was broken off. Women occasionally used the obtaining of a third person's consent as a conscious delaying tactic and deception. But the fact that women could use the consent of others as a 'bargaining chip' or even 'an escape clause' in the negotiations so successfully presupposed considerable filial obedience and submission in society.²⁶⁴ Even if the case was taken into court, the parental influence manifested itself in various court strategies with the result that the union usually came to nothing.

In addition to its insistence on the insolubility of marriage, the Church's dogma on marriage impediments has been perceived to have played the most important role in placing the Church in control of marriage. It gave bishops and ultimately the pope the possibility to decide which dynastic and aristocratic alliances of political and economic importance would be sanctioned by the Church. Some scholars have even claimed that the ecclesiastical rules severely curtailed the possibility for families to create large land holdings through marriage.²⁶⁵ Popes occasionally granted special regional dispensations of some of

²⁶³ McSheffrey, "I will never," 157–158; Klassen, "Marriage and Family," 157–158.

²⁶⁴ McSheffrey, "I will never," 156–158, 164–165, 174; Gottlieb, "The Meaning of Clandestine Marriage," 59; Klassen, "Marriage and Family," 259, 261.

²⁶⁵ Sjöholm, *Sveriges medeltidslagar*, 112–113, 118.

the Church's marriage laws, but after the limitation of the forbidden degrees of consanguinity and affinity from the seventh to the fifth degree by the Fourth Lateran Council in 1215 such concessions were rarely needed. Naturally, the papal powers to dispensate were frequently and actively used both in Rome and through legates elsewhere.

The Alexandrine marriage theory had been criticised for not taking into consideration the facts of life. As James Brundage has observed, 'in removing sexual relation from a central role in the creation of marriage, [the Church] ignored something that most ordinary people considered central to any marital relationship'.²⁶⁶ Secular society gave consummation—the sexual union of the couple—considerable importance both in theory and practice. In secular thought matrimony signified the beginning of licit sexual relations, and the main function of marriage was begetting legitimate issue. No matter how negative the Church's opinions of sex and marital sexuality were, and no matter how much the Church tried to dissociate defiling and impure sexuality from the sacrament of matrimony, in popular notions marriage meant sex. Still, the Church took one step back by adopting the doctrine of presumed marriage, which in reality brought consummated engagements on a par with present-tense marriages and signified a compromise between the secular and ecclesiastical perceptions of marriage. In allowing the termination of unconsummated unions, the Church effectively conceded that consummation perfected a valid marriage and made it indissoluble. Such an interpretation came, in fact, fairly close to the discarded consummation theory.

²⁶⁶ Brundage, "Impotence," 422–423.

CHAPTER THREE

THE CHALLENGE: CONTROLLING MARRIAGE FORMATION IN MEDIEVAL SWEDEN

3.1 *Marriage and the Church in Medieval Sweden: Imposing Indissolubility and Combating Incest*

Some scholars have noted the astonishing degree of acceptance of the Church's definition of marriage among the lay aristocracy and ordinary people in medieval Europe. In hindsight, the ecclesiastical tenets were indisputably a success story in the long run. Yet, relatively little is known of the progress of the doctrine in many regions and periods.¹ There are clear indications that the ecclesiastical doctrine penetrated slowly, because 'individuals do not determine their attitudes through learned doctrines, but through customary rules'.²

The third section of this book is dedicated to the acceptance and reception of canonical dogma of marriage in medieval Sweden and to the interaction between the two perceptions of marriage formation, viz. the 'traditional' Swedish and the imported Catholic. In this section I will discuss in what forms the canonical norms were accepted, and how the ecclesiastical perceptions of legitimacy of children and contracting marriage started to modify the Swedish system. I will argue that the introduction of the notion of a formless and private marriage contracted by words alone was an alien 'legal transplant' in a formal and ritualistic legal culture like medieval Sweden.³ The Church came to tolerate local marriage practices as long as they were not in conflict with canonical norms, especially the sacramental status of marriage, linked to the indissolubility of matrimonial unions, and the public and free consent expressed by both contracting parties.⁴ But before going

¹ Brooke, *The Medieval Idea*, 141. See also Pedersen, *Marriage Disputes*, 151–152.

² Turlan, "Recherches," 480.

³ On the reception of foreign law and so-called legal transplants, see Watson, *Legal Transplants*, esp. 27–30, 95–101.

⁴ For largely similar conclusions regarding the practices of the late-medieval French nobility and their acceptance by the Church, see Ribordy, *Faire les noces*, 140–141. According to her observations, the principle of consent was the inviolable foundation

into the making of marriage, let us first concentrate on how and when the Church managed to gain a hold on the jurisdiction of marriage in medieval Sweden.

For decades, the *communis opinio* among scholars has been that especially in the later Middle Ages 'the spirit of canon law' became the dominant force in the development of Swedish matrimonial law.⁵ But even before this period, the relationship between ecclesiastical matrimonial law and the lay society probably developed through some scarcely documented phases. We may presume that the canon law of marriage started to influence the Swedish marriage customs during the twelfth century. When the Church established itself as an organization in Scandinavia, it brought with it its legal system and its doctrine of marriage. At the initial stage the Church was prepared to make certain concessions to the converted pagans concerning adherence to its matrimonial laws. This was part of the missionary strategy as the Livonian experiences show. For example, under certain conditions uncanonical Levirate marriages would be tolerated if they had been contracted before baptism, nor were marriages contracted within the prohibited degrees dissolved through baptism.⁶

The chronology of the influence of the canon law of marriage was probably different in the various Nordic countries: Denmark, Norway and Iceland were Christianized before Sweden, not to mention Finland. Correspondingly, it would seem reasonable to assume that the influence of canon law was felt earlier in the western Scandinavia than in Sweden or Finland.⁷ This supposition would seem to be supported by different kinds of evidence: written laws and documents appear earlier in the west than in the east and the same applies for example to university studies abroad. There is evidence that Danes, Norwegians and Icelanders studied in Continental Europe in the twelfth century, while Swedes seem not to have attended foreign universities until the thirteenth century.⁸ In

of the Church's marriage doctrine, while nonage and consanguinity were less strictly upheld.

⁵ E.g. Pietilä, "Kirkon tuomiovalta," 79; Knuutila, *Avioliitto*, 46–54 and passim; Pylkkänen, "Avioliiton historiaa," 80–82, 86–87.

⁶ Brundage, *The Crusades*, XVIII, 314–318. See also *DS I*, doc. 56, 85; Bruguière, "Canon law and royal weddings," 476.

⁷ For similar observations regarding fifteenth-century Poland, see Brozyna, *Ecclesiastical Courts*.

⁸ Helk, "Danmark," 27–29; Gislason, "Island," 122–126; Bagge, "Norge," 141–150; Niléhn, "Sverige," 167–171; Nuorteva, *Suomalaisten*, esp. 54–56.

addition, the evidence would seem to point that interest in the canon law of marriage was expressed earlier in Denmark than in Sweden. The litigation concerning the Danish princess Ingeborg, discarded by her husband, Philip II Augustus of France, resulted in a lively interest in canonical marriage dogma. In addition, the French-born Abbot William of Æbelholt approached the Holy See frequently with marriage-related questions probably stemming from actual cases.⁹

As on the Continent, discussed above in Chapter 2.1, the Church first concentrated its attention on imposing indissolubility and combatting incest. Papal letters addressing the prohibition of the old traditional customs of divorce and remarriage demonstrate the enforcement of the indissolubility of marriage.¹⁰ Another dogmatic issue involved the Church's insistence on observing the impediments of consanguinity, affinity and spiritual affinity. The oldest known instance in which the Church interfered in royal marriages in Scandinavia dates from the eleventh century, when the archbishop was successful in having the marriage of King Svend Estridsen (1047–1074) of Denmark annulled because of consanguinity.¹¹ The Law of Church of Scania, presumed to date from 1171, includes a procedure for the episcopal investigation of an alleged impediment of kinship between the betrothed couple.¹² But especially affinity and public honesty being unknown to the Swedes, Pope Alexander III had to remind them of these impediments and of the threat of the crime of incest.¹³

We are told in a papal letter that, during his visit to Sweden in 1152, the papal legate Nicholas Brakespeare, Cardinal of Albano issued a statute on ecclesiastical liberties and matrimony, but its exact contents remain unknown.¹⁴ If one is allowed to speculate, the likeliest guess is that this statute dealt with the indissolubility of marriage (prohibition on divorce and remarriage) and the forbidden degrees. By contrast,

⁹ *BD*, docs. 15–21, 25–26, 16–20, 23–25.

¹⁰ 6.7.1161, *DS I*, doc. 41, 61–63; 3.11.1220, *DS I*, doc. 188, 210; *BD*, docs. 15–16, 20–21, 16–17, 19–21. Carlsson, *Jag giver dig min dotter*, II, 61–63. See also Jacobsen, “Sexual Irregularities,” 73–74; Holtan, *Ekteskap*, 36–46, 50–55; Jochens, *Women*, 55–61; Bandlien, *Strategies of Passion*, 165–170.

¹¹ *DS I*, doc. 56, 85–86; 7.11.1211, *DS I*, doc. 142, 165; 3.10.1213, *DS I*, doc. 150, 177; 22.10.1252, *DS I*, doc. 397, 357; 13.11.1198, *DS I*, doc. 108, 132; *BD*, 18–19, 23–26; Sawyer, *Kvinnor och familj*, 41; Carlsson, *Jag giver dig min dotter*, II, 62–66, 81–82, 86–89. See also 4.2.1227, *DS I*, doc. 242, 248–249; Jochens, *Women*, 42–44.

¹² *SkKk*, 9, 176–177. See also the papal letter from November 13 1198, *BD*, 5–6.

¹³ 6.7.1161, *DS I*, doc. 41, 62.

¹⁴ 28.11.1153, *DS I*, doc. 38, 57; Bååth, *Bidrag*, 7–8.

probably the first papal marriage sentence concerning medieval Sweden dates from the papacy of Celestine III (1191–1198) involving the validity of the marriage of the Swedish King Knut Eriksson (r. 1167/8–1195) and his queen. Both parties and their parents had given their consent to the betrothal and pledges had been given when the recurring civil wars erupted again and a rival killed Knut's father, King Erik Jedvards-son (the Holy). Fearing violence, the families agreed that the fiancée be placed in a convent in a nun's habit. She had not taken religious vows, though, and after the accession of King Knut to the throne, the couple got married and had many children together. Celestine declared the marriage valid and the children legitimate. In addition, Celestine considered the legal implications and bindingness of the vow of continence the queen had made during an illness.¹⁵

Unlike many other areas in medieval Europe, Sweden experienced no scandalous royal marriage cases in which the temporal rulers were found to have defied the Church's weapon of excommunication in their wilful persistence in a marriage that had been pronounced bigamous or incestuous by a bishop or the pope. On the contrary, the relative political instability of medieval Sweden made it important for kings to nurture their relationship with the Church. The coronation of the king, performed by the archbishop, contributed to the legitimacy of his power and authority. In return, in his coronation oath the king vowed to uphold the ecclesiastical privileges. At least some kings were deposed by a rival pretender after having been excommunicated by the Church. The pretenders, in turn, were willing to confirm the ecclesiastical liberties and even extend them further.

Once permanently established, the Catholic Church started to redefine marriage according to its own ideals and standards. The canon law on marriage impediments and indissolubility necessitated some safety valves. Concubinage has been identified as 'a device... in order to lessen the rigidity of formal marriage' in medieval society. The same applies to clandestine marriage, the social utility of which, according to Gottlieb, lay in its 'contribution of flexibility to a fairly rigid system of sexual relations'.¹⁶ The Church, however, insisted on maintaining a distinction between marriage and concubinage, something that was

¹⁵ *DS I*, doc. 825, 682–683.

¹⁶ Brundage, "Concubinage and Marriage," 1; Gottlieb, "The Meaning of Clandestine Marriage," 73.

finally achieved in the sixteenth century by the decree *Tametsi*.¹⁷ However, the Church did certainly not favour concubinage and actively tried to have the couple either permanently joined together in lawful marriage or permanently separated. The adoption of legal presumptions were a means to this end: according to the Norwegian *Gulatingsslov*, if a man lived openly with his concubine for twenty years or more, they were considered married and their children legitimate.¹⁸ Danish law included a section in which a man and his concubine who lived together for three years, sharing openly both bed and board, were considered to be husband and wife. This has been considered to be a legal presumption, directed against clerical concubinage or clandestine marriage.¹⁹ Also the Swedish late-medieval synodal statutes testify to growing pressure from the Church against concubinage as a substitute to marriage. The men who publicly kept concubines were supposed either to renounce them or betroth (*desponsare*) them. Otherwise, they would be denied communion. In the fifteenth century, the Church's attention was especially turned towards heads of the household (*paterfamilias*), who kept concubines publicly like wives in their houses.²⁰

By the thirteenth century the Church had managed to have its jurisdiction in matrimonial causes acknowledged by the Swedish kings. In 1279 King Magnus Birgersson Ladulås (r. 1275–1290) acknowledged that the ecclesiastical jurisdiction extended to include the crimes of incest, adultery, perjury, sorcery, crimes against nature, non-observance of holy days and fasting.²¹ Some provincial laws discuss matrimonial disputes under ecclesiastical jurisdiction, and even the rest of them implicitly but unequivocally indicate that matrimonial causes were to be adjudicated by bishops. For example, the law of East

¹⁷ Brundage, "Concubinage and Marriage," 10–11.

¹⁸ Holtan, *Ekteskap*, 84. See also Borgarthingslov II:10, *Bruchstücke der Rechtsbücher*, 58–59.

¹⁹ *JL*, 1.27, 24–25; *SkL*, Additamenta VIII:2, 153. Dübeck, "Women," 317–318; Nors, "Illegitimate," 28. Cf. Nellesman, "Retshistoriske Bemærkninger," 370; *Ein Urtheilsbuch der geistlichen Gerichts*, 14.

²⁰ Synodal statutes of Skara, probably from 1278–1317, *SKA*, 65; Statuta Lincolniensis 1339–1351, *SS*, 49; Statute of Archbishop Jöns Håkansson for Hälsingland, 4.3.1425, *SKA*, 40; Statute of Archbishop Jöns Håkansson for Jämtland, 14.2.1425, *SKA*, 44. Statutes of the provincial council of Arboga 1412, *SS*, 107. See also *ibid.*, 113; *Compendium statutorum provincialium Upsalensis*, *SS*, 155; *Summa canonum variorum conciliorum*, *SS*, 183; Ordinance for episcopal visitations 1480, diocese of Strängnäs, *SKA*, 96.

²¹ 15.10.1279, *SD I*, doc. 690, 557. Marriage was also explicitly part of ecclesiastical jurisdiction in medieval Norway, see e.g. Riisøy, *Stat og kirke*, 22–26.

Gothia acknowledged that the bishop had the right to break and bind marriages as well as ‘to know what is lawful and likewise what is unlawful’.²² Probably the omission of matrimony in the 1279 document of King Magnus Birgersson can be explained by interpreting it as an expansion of the older privileges of the Church. Some provincial laws also directly indicate that affiliation cases fell under ecclesiastical jurisdiction.²³ Be this as it may, by the time of the writing of the oldest Swedish provincial laws, the regulation of the matrimonial bond was undoubtedly under ecclesiastical jurisdiction despite some attempts of the town court of Stockholm to adjudicate cases involving marriage and betrothals (*causis...matrimoniorum, sponsaliorum*) in the fourteenth century. However, King Magnus Eriksson confirmed that such causes pertained *de iure* to the ecclesiastical forum and forbade town officials to interfere with the archepiscopal domain.²⁴

3.2 *The Secular Reaction to Free Consent: Securing the Guardian’s Rights*

Free Choice vs. Paternal Consent: The Effects of the Canonical Dogma

The consensual theory of marriage was not the only step that the Church took towards liberating the individual from the external control of the collective in medieval Sweden. Indeed, it has been pointed out that Catholicism ‘imported’ religious individuality to Scandinavia. In heathen times participation in the collective rites was all that was required of a person, while Christianity taught that a person’s religious status and salvation depended on the actions and efforts of the individual rather than on the perceptions of a religious elite or supernatural powers.²⁵

The Christian dogma of individual confessions of faith, personal sin and guilt, and salvation of the soul had repercussions in law. Consequently, the notion of individual guilt, as expressed in the canonical doctrine, left its imprint in the Swedish medieval laws based on the late thirteenth-century royal peace statutes that had been issued to curb vendettas and blood feuds. For example, a law was issued to limit the right

²² ÖgL, Kk 18, 19; VgL II, Ä 10, 271, Kk 59, 61, 216–217, Kk 59, n. 95, 234 (VgL IV 21:41).

²³ E.g. HL, Ä 13:3, 307.

²⁴ 2.1.1345, *DS V*, doc. 3877, 394.

²⁵ Nedkvitne, “Ny tro,” 112–115.

of revenge so that the injured party or his relatives were legitimately allowed to take revenge only on the actual culprit, and not on any of his kin.²⁶ Any woman who committed a crime like theft or homicide became individually responsible for the crime and was personally punished. Previously, as discussed above in Chapter 1.2, her legal guardian was required to pay compensation for her crime or be outlawed in her stead. On similar lines, the provision that a thief's wife's and their children's property could be confiscated only if they had participated in the larceny or had knowingly profited from the crime would seem to be based on the canonical notion of individual guilt.²⁷

In Aaron Gurevich's reserved discussion of medieval individualism he reminds us that the 'twelfth-century Renaissance' mainly only influenced that 'enlightened upper strata of society, and even those only in part. Statements made by intellectuals possessed of esoteric knowledge who promoted written culture, the culture of the Book, can hardly be regarded as representative of society as a whole in which the oral tradition was predominant'.²⁸ It was to take time before society at large was ripe for the Church's notions of individualism. In the meantime the communal culture continued to clash on occasion with the ecclesiastically-inspired legal by-products of the evolving emphasis on the individual. Yet, intellectuals were in charge of the legal development and thus individualism left its imprint on the law texts.

The alienation of landed property and the insitution of the will were some of the issues where individualism, supported by the Church, collided with medieval Swedish society. It was in the interests of the Church to ensure that land could be alienated to non-kin. 'In parts of northern Europe at least, the notion that land could be alienated from the family or even the larger kin group was probably developed so that the Church could be endowed'.²⁹ The Nordic kinship system was still based on the notion that all potential heirs had a subsidiary right to monitor and be consulted in the economic transactions of the relative whose heirs they were, even when this relative was still alive. The heir had to give his consent to those legal acts of the present owner that would reduce

²⁶ E.g. UL Kg 4, 44, *MEL*, E 13, 191; *KrL*, E 11, 122.

²⁷ E.g. ÖgL, V 33, 90; UL M 49: 2, 113; 28.1.1335, *DS IV*, doc. 3106, 408. Cf. ÖgL, D 9:1, 59. *MEL*, E 24:1, 194; *KrL*, E 21:2, 125.

²⁸ Gurevich, *The Origins of European Individualism*, 9.

²⁹ Quotation Sheehan, *Marriage, Family and Law*, 252; Brundage, *Medieval Canon Law*, 90. See also Wemple, *Women in the Frankish Society*, 117–118.

his expected inheritance. Consequently, the law presupposed that the owner consulted the heir before making any legal acts.³⁰ The Church insisted that all individuals were to be able to give 'soulgifts' (*själågävor*) for their personal salvation. Therefore, it had to be established which amount of the communal family property belonged to each member of the family so that they could donate a part of this property to pious purposes.³¹ Thus, the institution of the will for pious purposes was introduced to Sweden for this end. Another example of the same logic in medieval Sweden is that according to some laws donations to natural children necessitated kinsmen's consent.³²

As secular legal traditions considered paternal consent to be an indispensable precondition for a valid marriage, the Church's resolution to prioritize the assent of the principals alone had revolutionary potential. Indeed, the insistence on the free consent of the parties, if necessary in defiance of the wishes of the parents, was potentially the most inflammable part of the Church's doctrine of marriage. 'The rise of the new canon law of marriage was a legal change that certainly had enormous social implications' regarding, for example, serfs' freedom of marriage.³³ Generally, researchers have rightly identified it as such, and there is unanimity in the conclusion that the power of the woman's marriage guardians was to some extent eroded in the course of the High and Later Middle Ages because of the ecclesiastical dogma. Researchers have had differing opinions as to the magnitude of the practical repercussions of this theoretical tension, and here one might distinguish between the 'confrontationists', who stress the innate potential of conflict between the two perceptions, and the 'conservatives', who emphasize that the Catholic dogma changed the actual practice of the people very little, if at all.

Some researchers have concluded that the ecclesiastical dogma caused a protracted 'tug of war... between the Church and the lay authorities' regarding the role of consent in marriage.³⁴ In a thought-provoking article, Donahue has claimed that the Alexandrine consent theory was

³⁰ Hastrup, *Culture and History*, 85. This consent was also expressed in morning gift documents involving inherited land, e.g. 10.4.1307, *DS II*, doc. 1541, 493; 8.2.1349, *DS VI*, doc. 4396, 77; 14.9.1356, *DS VII*, doc. 5644, 91.

³¹ Sawyer, *Kvinnor och familj*, 53.

³² ÖgL, Å 4, 125. See also Dillard, "Women in Reconquest Castile," 81.

³³ Berkhofer, "Marriage," 27.

³⁴ Caenegem, "Law in the Medieval World," 42. See also Turlan, "Recherches," 502; Ribordy, *Faire les noces*, 140–141.

innovative and that the ecclesiastical insistence on the consent of the principals alone did in practice reduce the role of lords and family in the choice of a spouse. Donahue has also argued that the rules were embraced at least to some extent precisely for that purpose.³⁵ Likewise, having discussed Margery Paston and Richard Calle's clandestine marriage, Murray went on to interpret the case as 'a clear example of how the Church's doctrine effectively challenged the very foundations of the patriarchal family and the hierarchical structure that characterized medieval society'. This is also Michael Sheehan's conclusion regarding the late fourteenth-century register of Ely, which in his opinion is 'an indication of a pressure in late medieval society that was pushing men and women towards the more individualistic view of marriage'.³⁶

In her study of the ecclesiastical courts of late-medieval France, Lefebvre-Teillard has observed that the church courts were unyielding in their incessant protection of children's freedom of choice against the wishes of the parents. In this the officialities made themselves into 'makers of modern individualism'.³⁷ This is emphasis also shared by some Scandinavian scholars. The Church's doctrine of the voluntary character of matrimony, expressed in the consent of the parties, has been described as 'a serious threat to existing social order'. The policy of consent could prevent or restrict the families' possibilities to further their own interests through marriage, because the girl's consent was decisive. Alternatively, she could choose a completely unsuitable person, even an enemy.³⁸ Similarly, Holtan has assessed that as an insistence on female consent could cause serious imbalance in the medieval social structure, the authorities attempted to uphold the traditional values. Female wishes could not be taken into account because that would have upset the family alliances, essential in the twelfth and thirteenth centuries when central power was weak. Even the disinheriting of disobedient daughters was a waste of resources.³⁹ But while it has been denied that the prevailing pattern of matrimony arranged by kin was gravely endangered in medieval Scandinavia, much points to the fear of disturbance from the Church and the ecclesiastical doctrine of consent.⁴⁰

³⁵ Donahue, "The Policy," esp. 253, 259, 268–277.

³⁶ Murray, "Individualism," 124; Sheehan, *Marriage, Family and Law*, 76. See also Sheehan, *Marriage, Family and Law*, 39–40.

³⁷ Lefebvre-Teillard, *Les officialités*, 170.

³⁸ Sawyer, *Kvinnor och familj*, 46; Sawyer – Sawyer, *Medieval Scandinavia*, 175.

³⁹ Holtan, *Ekteskap*, 22–24.

⁴⁰ Sawyer, *Kvinnor och familj*, 48–51.

Other scholars have denied the conflict between the two perceptions, the collective, represented in the necessity of the consent of the closest relatives, and the individual, represented by the Church. After all, each individual only exists within a society.⁴¹ The existence of private and secret promises does not undermine the simultaneous operation of family and community constraints. Rather, in the stages of the marriage process there may have been ‘a structure that moves outwards from the interpersonal, to small groupings, and then to the community at large’.⁴² It has been claimed that if canon law was a weapon that the children could use against their parents, it was that only for the intrepid.⁴³ Other commentators have argued similarly: canon law had both its strengths and its weaknesses. While canon law ‘provided an avenue’ for children to challenge parental authority in questions of choosing a spouse, it could not protect them from parental pressure.⁴⁴ Or, in other words, ‘[o]nly the true love match, oblivious to disinheritance or other negative consequences, could ignore the necessity of parental approval for a secure marriage’.⁴⁵ Nevertheless, for example in disciplinary cases in the church courts of London, couples could lodge complaints against third parties, such as parents, who impeded their marriage.⁴⁶

As to the potential inherent conflict between parental and individual consent, some Scandinavian scholars have stressed that none existed in practice. Doubts have been raised that the Church’s dogma ever challenged existing Scandinavian social structures, as even before the twelfth century women had opinions about their future husbands and a possibility to express them. Second, women were no less likely than men to follow only their hearts in marriage matters. Third, it has been questioned whether Norwegian and Icelandic clerics ‘really promoted the new consensual theory beyond including it into the laws’. Finally, it has been argued that the Nordic aristocracy had a clear interest in

⁴¹ On the individual and the collective see e.g. Gurevich, *The Origins of European Individualism*, 89–90.

⁴² O’Hara, “Ruled by my friends,” 20–21; O’Hara, *Courtship and constraint*, 30–31, 38. See also Introduction in *Love & Marriage*, 10; Frances, “Making Marriages,” 43.

⁴³ Gottlieb, “The Meaning of Clandestine Marriage,” 70.

⁴⁴ Pedersen, *Marriage Disputes*, 29. See also Sawyer, *Kvinnor och familj*, 48; Ingram, *Church Courts*, 200–203.

⁴⁵ Harrington, *Reordering marriage*, 173. See also Brooke, “Marriage and Society,” 18.

⁴⁶ Wunderli, *London Church Courts*, 119–120. In the post-Reformation period, some English church courts prosecuted parents who had hindered the marriage of their children, Houlbooke, *Church Courts*, 63.

promoting the doctrine themselves: the adopted compromise was a model of double consent which, as in Roman law, gave both parents and children a say-so in the marital union and contributed to marital stability. The ecclesiastical policy for minimizing the role of parental consent has been explained as a result of an effort to stress the indissolubility of marriage.⁴⁷ Moreover, marriage guardians could use the necessity of giving the woman the final say in the match as a means of avoiding personal responsibility of the outcome, especially if negative.⁴⁸

What is indisputable, though, is that marriage was much too important for families to be meekly left to the Church. As matrimonial causes, except for property issues, fell almost exclusively under ecclesiastical jurisdiction in medieval Sweden, it was hardly conducive to openly defy the Church's authority to define what constituted a valid marriage. Consequently, secular society had to use more subtle methods to continue to persuade children. Wedding customs and marital property transfers often presupposed the participation and tacit consent of the parents. Indeed, the lack of a dowry could cripple any woman's chances or ever finding a husband. The insistence on parental consent was therefore especially strong among the nobility. The higher the circle, the slower the doctrine of consent made headway. In cases of abduction, although the party denying the abduction often claimed that the abducted girl's consent had been freely given, they argued even more often for parental approval or at least for their acquiescence. Namely, to act without the consent of the parents or kin was considered more reprehensible in aristocratic circles.⁴⁹

Although peer groups could hardly prevent marriage from taking place, they played some role in making the decision to marry. Some medieval guild statutes insisted that no current or aspiring member was allowed to betroth or marry a 'common' woman (*ena Appenbara quinna*) or another man's mistress (*amia*). No such men would be allowed to join or remain in the guild because they were not worthy of the brotherhood. Similarly, the bakers' guild presupposed that if a baker's widow wished

⁴⁷ Bandlien, "The Church's Teaching," 55–56, 69, 72–75; Bandlien, *Strategies of Passion*, 232–237; Arnórsdóttir, "Two Models of Marriage?" 81–82, 85, 87; Arnórsdóttir, "Marriage," 177.

⁴⁸ Jochens, "Consent," 146, 166.

⁴⁹ Ribordy, "Mariage," 38–39. On the question of abduction and parental consent see also Ives, "Agaynst taking awaye of Women"; Post, "Sir Thomas West"; Dean, "Fathers and daughters," 87–92, 97–103.

to remarry, she was to take an apprentice, who had served three-years as a master-apprentice in the town.⁵⁰

It will be shown below that the course of development in Sweden followed the general European trend. Before the Church's dogma on free consent, fathers had been giving their daughters away in marriage, although future marital harmony often depended on at least the tacit consent of the woman in question. When the Church's pressure on safeguarding the free consent of the parties started to make itself known in society, the laws accepted this, at least theoretically. The consent of both the father (or legal guardian) and the daughter was thought necessary in secular society. But the laws also started to impose financial penalties on those who infringed on the guardian's right to give the woman away in marriage. Parents were also given the possibility to disinherit their daughters if they married or fornicated without their consent.

Consent of the Principals vs. Parental Consent in Medieval Sweden and Scandinavia

Free consent was among the issues relating to marriage formation the popes dealt with in their letters to the Scandinavian archbishops. Naturally, the Church also supported the possibility of Scandinavian women to take the veil and embrace a life of chastity in a nunnery in spite of their families' wishes.⁵¹ This may even have been the first bone of contention concerning consent in Scandinavia.

The Norwegian Archbishop Eirik wrote to the Icelandic bishops in 1189 that marriage took place when, in the presence of witnesses, a man betrothed a woman 'with her own expressed consent'. The archbishop added, however, that this should take place with the kin's consent, which the priests should actively try to obtain.⁵² One of the cases in the *Liber extra* that dealt with the problems of proof in forced marriages of women by their parents was treated by Honorius III (1216–1227) in a letter to a Danish bishop, Niels of Schleswig.⁵³ Thus Danish women were actually attempting to escape arranged marriages by claiming at ecclesiastical courts their lack of consent, despite having

⁵⁰ Guldsmædernes skrå and Skinnarnes skrå, *Skrå-ordningar*, 156, 265; 20.5.1615, *SST från år 1592*, VIII, 66–67; Bagarnes skrå, *Skrå-ordningar*, 212.

⁵¹ Sawyer – Sawyer, *Medieval Scandinavia*, 177–178; Jochens, *Women*, 27.

⁵² Lehmann, *Verlobung*, 45; Jochens, "Consent," 143, 147–150; Jochens, *Women*, 44–46; Bandlien, *Strategies of Passion*, 165–166. See also *JL* 1.33, 30–31.

⁵³ X 4.1.28 = *BD*, doc. 143, 129.



4. *De nuptiis Lapporum per ignem* by Olaus Magnus Gothus. Roma, 1555. In the picture, the betrothed couple holds hands while four persons, possibly the parents of both parties, attend the ceremony. The consent and participation of the parents of the principal parties was stressed in Swedish secular law.

said 'yes' at the church door. Although many of these cases concerned the forced marriages of women, some involved shotgun marriages of men compelled to marry their mistresses by their furious parents and kinsmen as soon as the clandestine affair had come to light. Alexander III ruled that if a man who had been forced into a marriage even once gave his consent to the union after the marriage, presumably by consummation, it became indissoluble.⁵⁴

In the western Scandinavian countries of Denmark, Norway and Iceland, the ecclesiastical quest for consent also found its way into thirteenth-century literary sources, which show that the question of consent provoked mixed feelings. On one hand they make it clear that women's consent could be decisive, although in most of the sagas women were still being passively married off without mention of their opinion. Only if the woman expressly and adamantly refused was it foolish to disregard her feelings, as the marriage could end in dishonour and disaster.⁵⁵ The Danish Saxo Grammaticus (1150–1220) may have been commissioned to give historical justification for the Church's insistence on consent, and indeed, in his early thirteenth-century *Gesta Danorum*, he claimed that it was an old custom that nubile girls could choose their husbands. Nevertheless, the vast majority of the women in his tales were not consulted about their marriages, and those who tried to exercise their power of free choice either were rebuked and overruled, their marriages failed or they came to a bad end. On this basis, it has been suggested that the tradition of family-arranged marriages was hardly seriously hindered by the question of consent. Neither were the social nor the psychological pressures for children to submit to their families' wishes much alleviated.⁵⁶

Although in Scandinavia this 'seed of conflict'⁵⁷ never burst out into an all-out tug of war, the fact remains that especially those women who had been forced into marrying an unwanted suitor found recourse in the

⁵⁴ *Latinske dokument til norsk historie framtil år 1204*, 66–67; Bandlien, *Strategies of Passion*, 183–187. See also Donahue, "The Dating," 112.

⁵⁵ Jochens, "Consent," 150–152; Frank, "Marriage," 477; Sawyer – Sawyer, *Medieval Scandinavia*, 176–177; Bandlien, "The Church's Teaching," 64–66, 69; Bandlien, *Strategies of Passion*.

⁵⁶ Sawyer – Sawyer, *Medieval Scandinavia*, 176–177; Jochens, "Consent," 144; Bandlien, "The Church's Teaching," 55, 72–75. See also O'Hara, "Ruled by my friends," 15–16.

⁵⁷ Expression used by Sjöholm, *Sveriges medeltidslagar*, 111.

ecclesiastical doctrine although the high medieval Continental erosion of the marriage guardian's powers is said to have had no equivalent in Sweden.⁵⁸ Swedish medieval law came to accept a compromise. According to certain provincial laws, a marriage guardian who betrothed his kinswoman against her will was fined three marks if the betrothal was dissolved for this reason.⁵⁹ The father or guardian still gave her away, but her absence from the betrothal contributed to its non-bindingness. If she was absent from the betrothal or under the age of consent, she could repudiate the betrothal with the consent of her closest relatives when she came of age. This assumption of tacit consent from the presence and acquiescence of the woman or her participation in handfasting was also in accordance with canon law.⁶⁰ As discussed above, in canon law the notion of tacit consent to the marriages of minors meant that if the minor did not protest against the union immediately after having reached majority, s/he was understood to consent to it. This principle has been assessed to have 'unfairly stacked the legal cards against young people, who wished to dissent from child contracts' as even adolescents were still likely to be under the influence of those adults who had originally arranged the marriage.⁶¹ True, but the Church had to balance the principle of freedom of marriage against the indissolubility of marriage. This was a way of adjusting secular marriage customs to the basic requirements of canonical matrimonial law.

By the early thirteenth century the insistence on the woman's consent had found its way to the secular Norwegian laws, but yet the laws also presupposed the necessity both of the parties and their kin in making an unbreakable bond. Certain laws held that her expressed consent was necessary for a valid betrothal, while others held that the woman's guardian and the proposed groom should ask her in front of witnesses whether she consented to the union or not. Her consent or silence both signified acquiescence, but if she declined, she was not validly betrothed.⁶² Modern researchers have commented on the astonishing speed with which the doctrine became known in, for example, Iceland

⁵⁸ Sjöholm, *Sveriges medeltidslagar*, 118.

⁵⁹ VgL II, Kk 52, 215; VmL, Å 1:4, 44.

⁶⁰ HL, Å 1:1 and 1:4, 302–303; UL, Å 1:4, 64; VmL 1:4, 44. Söderlind, "Book review," 179; Sjöholm, *Sveriges medeltidslagar*, 119; Brundage, *Law, Sex, and Christian Society*, 396; Hall, *The Arnolfini Betrothal*, 69–70.

⁶¹ Ingram, *Church Courts*, 173–174.

⁶² Eidsivathingslov, I:22, *Bruchstücke der Rechtsbücher*, 94–97; Lehmann, *Verlobung*, 45–46.

and Norway.⁶³ However, for instance the law of *Eidsivathing* insisted that if a woman had been married (*gift*) against her will, she could have the union dissolved by protesting to her husband against it. But if she had cohabited with him for over a year, she could no longer dispute the validity of the marriage.⁶⁴

The Danish Law of Jutland from 1241 made a distinction in the matter of the women's consent depending on who her legal guardian was. If her father, major son, brother, grandfather or uncle were alive, the suitor had to negotiate the union with him. If no such close male kinsmen existed, she was to ask her closest male relative to give her away, but her consent was necessary.⁶⁵ In the Swedish ecclesiastical context, the free consent of the principals was also mentioned in summaries on marriage. Mutual consent was a necessary factor of marriage formation, and if a woman was forced to marry, there was no true marriage (*verum matrimonium*) unless she consented and cohabited with her husband afterwards. The 'legitimate' ecclesiastical solemnization was reckoned as a safeguard against forced marriage as the woman could freely protest against the match if she did not consent.⁶⁶ Some clerics, however, seem to have taken this function very lightly. At one priestly benediction the officiating cleric asked the man the customary question, whether he wanted to have the woman as his wife. The man did not answer in the affirmative, but instead mumbled 'mum, mum'. The woman claimed to have remained silent (*tacuit*) when the priest posed her the same question.⁶⁷

The Swedish mid-fourteenth century royal laws no longer mention female consent. Presumably, her presence at the betrothal ceremony was now taken granted, while her non-objection was interpreted as consent. Although the active words of consent had to be uttered in the ecclesiastical ceremony, the handfasting ritual of the engagement or betrothal had come to signify consent.⁶⁸ Handfasting was an old legal ritual related to contracts such as sales. Handclaspings or the

⁶³ Jochens, "Consent," 143–144. Cf. Arnórsdóttir, "Marriage," 179–180.

⁶⁴ Eidsivathingsslov, I:22, *Bruchstücke der Rechtsbücher*, 96–97; Bandlien, *Strategies of Passion*, 180–181.

⁶⁵ *JL* 1.33, 30–31; Dübeck, "Kvindernes retstilling," 97; Dübeck, "Women," 316.

⁶⁶ UUB, *Summa de ministriis*, *Capitulum xix, de matrimonio*, 210r–211r; *De septem sacramentis*, cap. VII, 201.

⁶⁷ 3.7.1419, *SD III*, doc. 2794, 587.

⁶⁸ Carlsson, *Jag giver dig min dotter*, I, 60–63; Arnórsdóttir, "Marriage," 183. See also Hall, *The Arnolfini Betrothal*, 36–37, 68–69; Brozyna, *Ecclesiastical Courts*.

touching of hands, symbolizing the union between the parties, is a common marriage rite all over the world, while the joining of hands or the bridegroom's taking the bride by the hand is of old one of the most significant marriage ceremonies of the Indo-European peoples.⁶⁹ Even when the girl was not present when the suitor and her parents negotiated the details of the marriage contract, she would join them for the handclasping, but it could also take place privately between the couple themselves, in which case it signified the promise to marry.⁷⁰ Medieval images that depict an engagement or marriage increasingly show the act performed by a cleric, and the consent of the parties was illustrated through the gesture of handclasping.

The hesitant acceptance in law of the ecclesiastical insistence on the woman's consent in secular society leaves open the question of practice. Undoubtedly, the ecclesiastical courts would have dissolved forced marriages if the matter had been taken to it and proven; but the lack of sources only allows us some hints. It seems as if the Swedes did not wish to abandon their traditional notions of parental authority just like that. In 1274, Gregory X (1271–1276) sent an open letter to the Swedish secular authorities and judges condemning certain infractions of canon law and violations of ecclesiastical jurisdiction or privileges. One of Gregory's grievances dealt with the forced marriages of women. In his letter, the pope deplored that marriages were being performed although the women denied their consent, whereas matrimony was supposed to be free (*matrimonia libera debent esse*), regardless of parental assent. The protesting women were being transferred into their husbands' houses against their will, they were being abused and the marriages consummated. The women were being detained in this way against their wishes until forced with violence to accept their husbands.⁷¹ This letter paints a very dark picture of the Swedish wedding customs, but surely such extreme incidents of forced wedlock must have been exceptional. Even so, the letter shows once more that even in Sweden the pope emerged as the supreme protector of the freedom of marriage and that the inherent conflict between parents and children did not always remain dormant.

⁶⁹ Westermarck, *The History*, II, 438–441; Molin – Mutembe, *Le rituel*, 88–89; Carlsson, *Jag giver dig min dotter*, I, 46, 61; Frensdorff, "Verlöbns," 337–338; Holtan, *Ekteskap*, 12.

⁷⁰ Roper, "Going to Church," 73, 87.

⁷¹ 9.8.1274, *DS I*, doc. 577, 476.

In a letter from the provincial council of Tälje in 1412, the Swedish clergy complained that aristocrats and bailiffs were still forcing girls to marry their subordinates or clients (*suis satellitibus*) against their will, compelling priests to bless such unions.⁷² A case from 1412 shows the position of the clergy as the guarantor of the free consent of the parties in a somewhat different light. Namely, Torkel, archdeacon of the diocese of Skara, did not hesitate to join together two his tenants, Gunnar Nilsson and Gunnor Torgilsdotter, although Gunnor had been insane, though having lucid intervals, for at least a year prior to the wedding. She was described as so mad that she ran around the fields and impenetrable forests like a wild animal. At the wedding, the bride ran away to the fields from the high table. The bridegroom, Gunnor's father and other men had brought her back to Torkel's house tied up.⁷³ Such circumstances are hardly very convincing evidence of a serious attitude to the doctrine of free consent.

The grievances concerning forced marriages have their parallels in parents or relatives pressuring children to enter the cloister. This could be a useful family strategy to reduce the number of heirs in a system of partible inheritance. Occasionally daughters or sons lacked the necessary conviction to take the final vows after the novitiate. The most famous example is of noble Nanne Kärling who ran several times away from the monastery of Varnhem without taking binding vows. Only after three decades of litigation in Rome and Sweden, it was finally established that he was a layman.⁷⁴ In another case from the eve of Reformation, King Gustav Vasa interceded for the daughter of Lasse Persson of Vadstena with Bishop Hans Brask of Linköping. The girl had secretly contacted the king claiming that she had no inclination of taking the veil, but that her father willed it. The king told Brask not to consecrate her at the request of her father or the nuns.⁷⁵

However, as elsewhere,⁷⁶ consent started to be perceived as double consent: that of the parties themselves and of their next of kin. This emerges in the response of the knight Erik Abrahamsson [Leijonhufvud] to the inquiry of the Protector Sten Sture (the younger) regarding his

⁷² 17.9.1412, *SD II*, doc. 1622, 550; Brilioth, *Svensk kyrka*, 317.

⁷³ *Den helige biskop Brynolf af Skara levnad*, 20, 79–80.

⁷⁴ For discussions of this case, see Nordmark, "Nanne Kärling"; Salonen, "Fallet Nanne Kärling"; Hockman et al., "Karanneen munkin tarina".

⁷⁵ 18.2.1524, 176, *BHBR*, 244.

⁷⁶ For Anglo-Saxon England, see Ross, "Concubinage," 8. See also O'Hara, "Ruled by my friends," 14.

consent to the marriage of his kinswoman and Olof Björnsson. The knight wrote that since the girl herself had consented to the union, to which her mother and many friends and relatives had assented, he was quite content with the match.⁷⁷ Moreover, in some requests for dispensations, the betrothal or marriage was said to have been contracted with the co-operation of relatives: for instance, the union between Sigge Magnusson and Ingegerd Karlsdotter took place at the advice of the relatives of both and in another supplication the parties explained that both their parents had given their counsel and consent to the match.⁷⁸ Naturally, this mention of the assent of relatives may also be a ruse of the parties for obtaining the dispensation as dissolution would cause scandal and hostility between the families. But there is no reason to doubt that the consent of parents and relatives was a significant factor—indeed a self-evident fact—in marriage formation. As Ribordy has observed, for the nobility of medieval France, ‘marriage *de consensu amicorum* constituted the rule.’⁷⁹

The advent of Church-introduced individualism and of the principal parties’ personal responsibility in marriage matters is also visible in Swedish law. The Church started to consider the woman herself as accountable if she got engaged to two men, while the Church had forbidden her to contract new ties pending litigation concerning the first contract. She had to pay three marks for her disobedience, as her marriage guardian was no longer held responsible for the ‘bigamous’ second contract in all medieval laws.⁸⁰ While the mid-fourteenth-century royal laws punished only the woman’s marriage guardian with a forty-mark fine if he betrothed her to two or more men, the 1442 law no longer distinguished between man and woman. Any person who was betrothed to another person without breaking the former union was fined forty marks.⁸¹

Disinheritance and Parental Consent: Swedish Patriarchalism?

While most of the Swedish medieval provincial laws already had included paragraphs concerning the woman’s consent to the marriage

⁷⁷ RA, Sturearkivet, number 1279, 22.1.1517.

⁷⁸ 23.1.1353, *DS VI*, doc. 5397, 773; 16.3.1353, *DS VI*, doc. 5407, 778; 19.3.1353, *DS VI*, doc. 5408, 778.

⁷⁹ Ribordy, *Faire les noces*, 27–45, quotation on page 27.

⁸⁰ UL, Kk 15:1, 25.

⁸¹ *MEL*, G 2:1, 39; *MESL*, G 2:1, 38; *SL 1387*, G 2, 15; *KrL*, G 2:2, 44.

or at least her presence at the betrothal, fourteenth-century royal legislation contained evidence of a secular counter-reaction to the Church's insistence on free consent. This was undoubtedly considered necessary because, in the eyes of the Church, the lack of parental consent did not render a marital union null and void. While matrimony was by this time considered to be under the Church's jurisdiction, direct defiance was hardly appropriate. Accordingly, an international alternative, an indirect financial sanction for disobedience, was found applicable also to Swedish society.

When it became obvious that the ecclesiastical courts were enforcing the will of the principals and disregarding the objections of their fathers and legal guardians, the secular societies retaliated. Unwilling to challenge the validity of marriages blessed by the Church but contracted in opposition to parental choice, secular laws applied financial sanctions to those children who defied the natural filial obedience they owed their parents. Disinheritance was the most powerful of these indirect weapons. Another method was the sanctioning of abductions and elopements (discussed above in Chapter 1.2). Although some researchers have pointed out that these pecuniary and criminal penalties were only seldom applied, at least to their full extent, and that the parents often came to accept a *fait accompli*, this does not necessarily mean that they fell into desuetude. Their mere existence gave parents a deterrent and means to restrict the financial damage of unwanted alliances.⁸²

Canon law saw to it that parents could no longer 'completely control the marriage of their children... [b]ut the secular property law... gave them a card which they could and did play'.⁸³ Moreover, it has been estimated that '[e]conomic dependence may have been a critical factor' in the subtle exercise of parental control.⁸⁴ Clauses in wills were often used in order to persuade children to marry a certain specified person or consult third parties before taking their decisive plunge into matrimony. For example, a child marrying without the consent of the executor(s) could lose the property promised in the will. Alternatively, a person marrying before a certain age could inherit only at the discre-

⁸² E.g. Nicholas, *The Domestic Life*, 54–59; Dean, "Fathers and daughters," 95–103, 106.

⁸³ Donahue, "English and French Marriage Cases," 360.

⁸⁴ O'Hara, "Ruled by my friends," 13–14.

tion of the executors.⁸⁵ In medieval Sweden, however, this means of dictating the choices of the daughters from the grave seems hardly to have been used.

While women were supposed to be given in marriage, men had more liberty. The law of Södermanland is exceptional in this sense in explicitly insisting that the young man take counsel with his kin before asking for a wife.⁸⁶ The Norwegian law of Magnus Hákonarson is its closest equivalent: it stipulated that if a man married without the consent of his kin, he lost the revenues of his land to his heirs.⁸⁷ The Swedish royal laws, however, contain no restrictions concerning the marriage of sons. Although legally able to marry as they wished, men often sought the advice and permission of their relatives, friends, patrons and masters. In a letter from 1518, Knut Arvidsson [Stenbock] asked for Sten Sture the younger's advice, concerning his future marriage, as he desired to be guided by Sture's opinion and hoped for a fief in return.⁸⁸ By contrast, in the early sixteenth century squire (*väpnare*) Peder Larsson [Ulfstand] was forced by his mother and siblings to swear never to marry Elin, who had been his mistress both during and after her marriage to Måns the Hatmaker of Uppsala, of whose death she was vehemently suspected. Peder's family considered Elin to be disreputable and bad woman and that the marriage to her, which finally took place despite their objection, would bring shame and disdain to the whole family.⁸⁹

Instead, disinheritance was a powerful way of persuading a girl to obey as few men were prepared to marry a girl without dowry. In Sweden, this sanction first appeared in the provincial law of Uppland, ratified by the king in 1296. If a maiden married against her parents' wishes she lost her parental inheritance.⁹⁰ Many provincial laws included a similar paragraph of disinheritance unless the parents publicly forgave her.⁹¹ Through the royal statute of Skara of 1335, in which King Magnus Eriksson stipulated that maids marrying without their fathers'

⁸⁵ Turlan, "Recherches," 487–489; Nicholas, *The Domestic Life*, 26; Mundy, *Men and Women*, 102–104; McSheffrey, "I will never," 170; O'Hara, "Ruled by my friends," 14; Stone, *The Family*, 130, 135.

⁸⁶ SdmL, G 1, 64.

⁸⁷ See also *Landrecht des Königs Magnus Hakonarson*, V. Erfðatal 22.1, 192–193; Lehmann, *Verlobung*, 12.

⁸⁸ RA, Sturcarkivet, 1631, 1.7.1518.

⁸⁹ 11.3.1555, *GFR* 25, 75–78. See also Lahtinen, *Sopeutuivat*, 124–125.

⁹⁰ UL, Ä 1:2, 64.

⁹¹ DL, G 2: 1, 78–79; VmL, Ä 1:2, 43–44; SdmL, G 1:1, 64; HL, Ä 1:2, 302; ÖgL, Ä 1:1, 123.

consent forfeited their paternal and maternal inheritance, the sanction was made applicable throughout the realm.⁹² The laws of King Magnus Eriksson decreed the loss of inheritance in all cases in which a maiden took a man without her father's or mother's consent. Thus this applied both to unauthorized fornication (*löscoleghe*) and actual marriage.⁹³ Marriage without parental permission was perceived as an offence towards *their* authority, whereby *they* had the right to disinherit the wayward daughter, who was still able to receive inheritances from other members of the family and more distant kin. Moreover, if one of the parents was deceased, the daughter only risked losing the right to inherit the remaining parent if the estate had already been divided between the widow(er) and the heirs.⁹⁴ Fornication was probably included because girls might have been inclined to start a liaison with their lovers, using pregnancy as a means of pressuring their parents into giving their consent to a *fait accompli*. In the town law, the seducer of a virgin was penalized with loss of his nose or a forty-mark fine in addition to banishment from the town. This fine was included in a modified form in the 1442 law of the Realm.⁹⁵

In a document from Finland in 1490 Arvid Eriksson, brother of Johanna, who had been disinherited by her parents for marrying Ivar Uddsson against their will, freely donated some property to her son Arvid Ivarsson. Arvid Eriksson was not obliged to do this, but he did it 'out of grace and benevolence'.⁹⁶ Many people contracted marriage only after the death of their father or both of their parents. Although in this case the woman would have another marriage guardian, the pressure would probably be less formidable, as the threat of disinheritance would no longer be relevant. The same applied if there was nothing to inherit.

Laws all over late-medieval Europe, especially in the towns, imposed financial sanctions on children who contracted wedlock behind their parents' backs or without their permission, as illicit unions were perceived as a plague on society. Even in these regions the sections are mainly a reaction to the ecclesiastical dogma, challenging paternal

⁹² 28.1.1335, *DS IV*, doc. 3106, 408.

⁹³ *UL*, Å 1:2, 64; *VmL*, Å 1:2, 43–44; *MEL*, G 3, 40, *KiL*, G 3, 44; *MESL*, G 3, 39; *SL 1387*, G 3, 16. See also Prevenier, "Violence against Women," 187.

⁹⁴ Olaus Petri, "Kommentar till Stadslagen," G 3, 323.

⁹⁵ *MESL*, G 3:1, 39; *SL 1387*, G 3, 16; *KiL*, G 3:1, 44.

⁹⁶ 20.3.1490, *FMU V*, doc. 4285, 255. Cf. *SL 1387*, G 3, 16.

authority and patrimony. Indeed, although the Church was in many respects conservative, marriage, paradoxically enough, was a field in which the Church, for reasons of its own, exercised a very emancipatory influence. Conversely, the bourgeoisie in the great commercial cities, often a progressive force, acted in a repressive and reactionary manner, especially in restricting and neutralizing the effects of the freedom of consent.⁹⁷ Especially in southern Europe, Roman law furnished the *patresfamiliae* with further legitimation and means.⁹⁸ The Roman legal tradition, strongly influencing town statutes, often provided parents with justification to deprive their daughters, marrying without paternal consent, of dowry and even all inheritance.⁹⁹ It has been estimated that 'in the fundamental tension between the marriage partners and their families and lords which characterized medieval marriage law, canon law favoured the marriage partners, Roman law their families'.¹⁰⁰ Although only the consent of the principals was legally necessary, Italian notaries asked first for the consent of the groom, and then for his father's and after obtaining the bride's consent, they asked for her father's.¹⁰¹ This was done in the best Roman legal tradition.

In some countries the medieval municipal statutes required paternal consent before underaged daughters were permitted to marry. Here again municipal law followed the way paved by glossators such as Azo and Accursius.¹⁰² In Italy and the south of France, the age of majority ranged from fifteen to twenty-five, but usually paternal consent was required under the age of twenty or twenty-five.¹⁰³ In later medieval Flanders, the ages of majority especially for women rose from eleven or twelve years to twenty-five.¹⁰⁴ In German town laws, the age of majority ranged from eighteen to twenty-five. Town laws and municipal statutes allowed fathers to disinherit their stubborn and disobedient children, as, for example, the town law of Augsburg of 1276. The sanctions

⁹⁷ Greilsammer, "Raps de séduction," 50. Nicholas, *The Domestic Life*, 53–54; Prevenier, "Violence against Women," 189. See also Jochens, "Consent," 145; Frensdorff, "Verlöbniß," 322–323.

⁹⁸ E.g. D. 23.2.19; Reynolds, *Marriage*, 23.

⁹⁹ Dean, "Fathers and daughters," 91; Dillard, "Women in Reconquest Castile," 80; Turlan, "Recherches," 492; Donahue, "The Case of the Man," 48–50. See also Stone, *The Family*, 134–135.

¹⁰⁰ Donahue, "The Case of the Man," 5.

¹⁰¹ Leisching, "Eheschliessungen," 37–38.

¹⁰² Donahue, "The Case of the Man," 38–39.

¹⁰³ Dean, "Fathers and daughters," 89; Mundy, *Men and Women*, 81.

¹⁰⁴ Greilsammer, "Raps de séduction," 55–56, 63.

was usually disinheritance or alternatively fines and banishment.¹⁰⁵ By contrast, both the *Sachsenspiegel* and the *Schwabenspiegel* explained that although a woman could damage her reputation by fornication, she did not lose her parental inheritance rights thereby.¹⁰⁶ The legislation against abductions and elopements also occasionally prescribed of the disinheritance of the abducted woman who refused to return to her family. She could lose all her possessions and inheritance rights as if she was dead.¹⁰⁷

One of the first Scandinavian mentions of this international reaction to the Church's policy¹⁰⁸ can be found in the Danish Law of Jutland from 1241. According to this law, a maiden who 'married herself or went away from her kinsmen's advice' lost her paternal inheritance. Also if she fornicated without their consent, she forfeited her property.¹⁰⁹ If she married without her legal guardian's consent, she and her husband lost control of all her property for as long as she lived, while her relatives administered her property. The town law of Ribe contained a similar stipulation: a woman marrying without the consent of her guardian lost the right to use or manage her property for the rest of her life. The town statutes of Flensburg and Tønder were almost equally strict: eloping women lost all claims to their property during their parents' lifetime. Presumably, after their death the property was to go to their closest heirs. A man, who enticed his beloved into eloping with him was punished with a nine-mark fine, while the girl lost the rights to her property during her guardian's lifetime.¹¹⁰ The Norwegian laws of Magnus Hákonarson from the 1270s expanded the scope of threat of disinheritance: the wayward daughter was not to inherit at all from anyone.¹¹¹

Some Scandinavian laws extended this penalty to fornication that was illicit in the sense of that it had taken place without parental

¹⁰⁵ Frensdorff, "Verlöbniß," 317–322, 325–327; Roper, *The Holy Household*, 159; Harrington, *Reordering marriage*, 173–174; Ozment, *The Bürgermeister's Daughter*, 139, 159.

¹⁰⁶ *The Saxon Mirror*, I:5, 70; Ozment, *The Bürgermeister's Daughter*, 159.

¹⁰⁷ Greilsammer, "Raps de séduction," 56–70; Nicholas, *The Domestic Life*, 53–54; Prevenier, "Violence against Women," 189.

¹⁰⁸ Cf. Arnórsdóttir and Nors, "Ægteskabet i Norden," 37–38.

¹⁰⁹ *JL*, 1:8, 14–15.

¹¹⁰ *JL*, 1:33, 30–31; Dübeck, "Kvindernes retsstilling," 97, 107; Dübeck, "Women," 318. See also UL, Å, footnote 6, 78.

¹¹¹ *Landrecht des Königs Magnus Hakonarson*, V. Erfdatal 2.1, 148–149. See also *ibid.* Erfdatal 7.7, 162–165; Bandlien, *Strategies of Passion*, 237.

consent.¹¹² In medieval Iceland, for example, lesser families gave their daughters to chieftains and magnates as concubines to create alliances and further family interests. Thus it was highly relevant whether the woman fornicated under the orders of her family or despite them. According to the Icelandic *Grágás*, disinheritance was the automatic consequence only if the woman acted disloyally to her kin by trying to hide her pregnancy and by keeping the name of her lover secret. If she was co-operative and loyal to her family's interests, the law only recommended that she lose her inheritance rights.¹¹³ However, in 1281 *Jónsbók*, the new law modelled on Norwegian legislation, introduced the disinheritance of women as a penalty for seduction or secret marriage. This was probably thought necessary due to the growing influence of the Church's model of free choice. Nevertheless, Bishop Árni protested on this point against the new legislation, probably considering it to be contrary to the freedom of marriage.¹¹⁴

Although the secular laws avoided a full frontal confrontation with the Church and chose not to deny the validity of these unions, even the financial penalties inflicted on disobedient children were also perceived by the Church as undue coercion. In fact, a papal decretal included in the *Liber extra* considered penalty clauses attached to engagements of minors to be contrary to the freedom of marriage. Consequently, such an agreed sanction was not binding, and the party insisting that it be paid was to be pressured by ecclesiastical censure to desist from demanding it.¹¹⁵ Despite canonical disapproval such penalties, based on the monetary pledges known as *arrha sponsalicia* in Late Antiquity, seem to have been relatively common in medieval Europe: for instance in Italy and in the towns of northern Germany and the Low Countries. The party breaking the union had to pay the other considerable financial compensation that had been agreed upon at the trothplight.¹¹⁶

¹¹² UL Ä 1:2, 64; ÖgL, Ä 1:2, 123; VmL, Ä 1:2, 43–44; HL, Ä 1:2, 302; MEL, G III, 40; KrML, NK 3, 44; Jacobsen, "Sexual Irregularities," 78, 80.

¹¹³ Magnúsdóttir, *Frillor och fruor; Isländisches Recht: Die Graugans*, IX:157, 281, note 1, cf. IX:161, 288; Jacobsen, "Sexual Irregularities," 74.

¹¹⁴ Jochens, *Women*, 46–47; Arnórsdóttir – Nors, "Ægteskabet i Norden," 38.

¹¹⁵ X 4.1.29; Helmholz, *The Spirit*, 238.

¹¹⁶ Trexler, *Synodal Law*, 124. See also *Les statuts synodaux IV*, 131. On the *arrha sponsalicia* as a pledge and penalty, see Evans-Grubbs, "Marrying," 61, 68–69, 72, 74; Molin – Mutembe, *Le rituel*, 144–145; Ritzer, *Formen, Riten*, 70–72; Gaudemet, *Sociétés et mariage*, 20–21; Reynolds, *Marriage*, 6; Cavallar – Kirshner, "Making and Breaking," 409–435. On such penalty clauses in medieval towns, see e.g. Nicholas, *The Domestic*

Only under particular circumstances did Scandinavian secular laws grant a woman the right to marry without obtaining the consent of her parents or kin. As discussed above in Chapter 1.2, Swedish widows were usually considered to be free from the restraints of legal guardianship in general and marriage guardians more particularly. The same principles applied to most other Scandinavian countries. According to Icelandic law, a widow who was of age and whose father was no longer alive was allowed to choose for herself.¹¹⁷ The comparable position of the widow as freer than a maiden, but still to some extent dependent on her family, is more clearly expressed in certain Danish and Norwegian laws. The Danish laws of Scania and Jutland acknowledged the right of the widow's closest kin to act as her marriage guardian in arranging her marriage.¹¹⁸ The Norwegian Law of Drontheim granted economically independent maidens who had reached majority the right to arrange their own marriages. According to the town law of Visby, a parentless maiden of eighteen or more, considered ripe to have a man (*Manwuxen; manbare*), could give herself away in matrimony without the consent of her guardian and closest relatives without loss of her inheritance.¹¹⁹ In the Norwegian laws of King Magnus Hákonarsson a compromise seems to have been reached: widows could remarry with the consent of at least one of her kin (*nokors frenda sins raðe*).¹²⁰

Donahue has suggested in his comparison between England and northern France that partible inheritance may to some extent explain the willingness of French parents to control their children's betrothals as all the children, not only the eldest son, inherited. This may also correlate with a more pronounced individualism in England in contrast to the more communitarian northern French society. Nicholas has made a similar point of medieval Ghent, where partible inheritance was customary. The fact that women could thus own considerable property 'explains the great care taken by wealthy kindreds to ensure that their daughters married the right men; for although the husband's rights over his wife's property were not unlimited, the family could sustain severe

Life, 26; Carlsson, *Jag giver dig min dotter*, I, 86; Frensdorff, "Verlöbniß," 345–346; Erdö, "Eheprozesse," 260–263. See also 11.9.1438, *FMU III*, doc. 2268, 154–155.

¹¹⁷ *Isländisches Recht: Die Graugans*, IX:144, 259; Hastrup, *Culture and History*, 93; Jochens, *Women*, 27.

¹¹⁸ SkL, Om arv 46, 12; *JL*, 1.33, 30–31.

¹¹⁹ Lehmann, *Verlobung*, 41, 43; Hadorph 1688, 4.1.25.2, 79.

¹²⁰ *Landrecht des Königs Magnus Hakonarson*, V. Erfðatal 2.2, 150–151.

losses'.¹²¹ Although at first sight there are some similarities between the northern Franco-Flemish pattern and Sweden, the matter cannot be proven or disproven in this research due to a lack of evidence of ecclesiastical litigation.

Vulnerable Virgins Abused by Their Guardians: Limited Legal Recourses

Because a maiden's marriage guardian was normally her closest male relative, a conflict of interest between him and his ward could occasionally arise. Until she married, her guardian would administer her property as his own, and consequently, he could refuse to give her in marriage to any suitor. If the maiden and her marriage guardian were co-heirs, it was in his interests to keep the estate intact for if she married, he would have to give her share of the inheritance as dowry. In such situations the maiden's position was precarious, as her guardian might be more willing to guarantee his own profit than hers. Another reason of a father to delay a marriage was the wish to profit from his daughter's unpaid labour.¹²² Such conflicts of interest could be a real hindrance to the freedom of marriage, which is why many Continental and Scandinavian medieval laws had included safety valves to protect the women's best interests.

Several Continental laws had taken into account the conflict of interest between an eligible woman and her legal guardian and provided legal means to circumvent the problems caused by the guardian's selfishness, greed or neglect. The authority of the Justinian laws provided a partial solution to this problem: parents or grandparents wishing to marry off their daughter or granddaughter with a dowry could justly disinherit her if she ungratefully refused to marry and lead a licentious life instead. Whereas after reaching the age of twenty-five, she could either marry beneath her or fornicate without the consent of her parents if they had prevented her marriage. There was no just cause for disinheritance as the parents themselves were to blame.¹²³ Accordingly, medieval and early modern German fathers and guardians were considered responsible for arranging a suitable match for a maiden before the age of twenty-five. The guardian's inability or unwillingness

¹²¹ Donahue, "English and French Marriage Cases," esp. 348–366; Nicholas, *The Domestic Life*, 26.

¹²² E.g. VaLA, LDP, A I a:1, 21.12.1608, 36.

¹²³ Nov. 115.3.11.

to marry off a nubile girl provoked suspicions of his wanting to keep her dowry for himself.¹²⁴ Medieval Italian town laws were often aware of the conflicting interests of fathers, widowed mothers and their children. They stipulated that if a girl was still unmarried at twenty, she could be given away by two close kinsmen, who could provide her with a dowry. If she had brothers, they were supposed to see that she was married at an earlier age, ranging from fourteen to eighteen. The negligence of her brothers justified her unpenalised marriage without their authorization, even if some town laws insisted on certain procedures guaranteeing the publicity of the union.¹²⁵

The medieval laws of Denmark and Norway (including Iceland) had provided maidens with recourse against ill-willed or mercenary legal guardians refusing or neglecting to arrange a marriage for them. Danish law held that a brother or another male relative who was the maiden's legal guardian could not retain her and her property at will. After she had reached the age of eighteen, her relatives, who could testify that they could arrange a suitable match for her, were allowed to take the matter to the king. Her relatives and the king would then give her in marriage.¹²⁶ A maiden of eighteen or a widow wishing to marry could make the matter public at the assizes. If her kinsmen still remained passive, she could increase the pressure on them by fornicating with the man of her heart. Although he might be fined for fornication if it was her first offence, she did not forfeit her property rights, which would have been the normal consequence. Moreover, once the demand of marriage had been made, she had to pursue the matter to the end at the assizes she had first taken it to and not roam from court to court. However, this rule did not apply if the guardian was her father.¹²⁷

Magnus Hákonarson's Law, issued in Norway in the 1270s, gave the extended kin the power to consider whether the proposed union was dishonourable or not. If they agreed, entering into the union did not entail any financial penalties to the maiden.¹²⁸ The Icelandic law *Grágás* contained a similar provision: if a guardian had twice declined to give a maiden who was at least twenty years old in marriage to an acceptable

¹²⁴ Ozment, *The Bürgermeister's Daughter*, 19–20, 159–160.

¹²⁵ Dean, "Fathers and daughters," 89–90.

¹²⁶ *JL*, 1.8, 14–15. See also *JL*, 1.7, 12–13.

¹²⁷ *JL*, 1.8, 14–15; Dübeck, "Kvindernes retstilling," 97; Dübeck, "Women," 316–317.

¹²⁸ *Landrecht des Königs Magnus Hákonarson*, V. Erfðatal 2.1, 148–151.

suitors in order to keep his hands on her property, she had the right to marry on her own with the assistance of another relative.¹²⁹

In contrast, most Swedish medieval laws were silent on this issue. Two exceptions were probably influenced by western Scandinavian laws and the Church. The provincial law of East Gothia stipulated that if a woman's guardian, her closest paternal kinsman, was unwilling to give her away in marriage, the matter could be taken to the assizes. By the judgement of the king or *lagman*, the right to betroth her could be transferred to her closest maternal kinsman 'or the one who is most willing to do so'.¹³⁰ In addition, the provincial law of Gotland safeguarded a maiden's interests against her brother's failure to act: after the father's death, the brother was to arrange a marriage for his sister. If he was unwilling to do so, he had to give her one eighth of his lands for her upkeep. This property was to be administered by the closest relatives and the people of the hundred so that she did not use her property irrationally.¹³¹

The only Swedish law empowering women of age to enter into contracts independently, was the strongly German-inspired town law of Visby: a parentless maiden of eighteen or more could give herself away in matrimony.¹³² Despite these mentions, no identical paragraph was included in the Swedish Laws of the Realm. This omission in the later medieval laws might tentatively be interpreted as a conscious effort of part of the secular authority to reinforce the powers of marriage guardians, whose position had at least obliquely been challenged by the Church's insistence on the consent of the contracting individuals and its willingness to champion to the freedom of marriage.

Fatherless maidens, exploited by their ruthless kinsmen, doubtless needed such ecclesiastical protection, especially if secular law provided no remedies for them. Canonical dogma probably influenced the secular legislation in western Scandinavia, especially Denmark. The norm giving women the possibility to take their guardian's refusal to arrange their marriage to court has been interpreted as a novelty.¹³³ These norms may be an indication of the stronger role of the Danish Church in protecting the woman's possibility to marry against the will

¹²⁹ Lehmann, *Verlobung*, 41; Jochens, *Women*, 27.

¹³⁰ ÖgL, G 4:1, 102. Cf. D 23.2.19; Treggiari, *Roman Marriage*, 147.

¹³¹ GL, 24:4, 225.

¹³² Hadorph 1688, 4.1.25.2, 79; Lehmann, *Verlobung*, 43.

¹³³ Sawyer – Sawyer, *Medieval Scandinavia*, 178.

of her parents and kin. Moreover, the late twelfth- and early thirteenth-century Danish documentary and legal material portrays clerics not only as actively approaching the Holy See with marriage-related questions, but also energetically enforcing the canon law of marriage in the kingdom. It should also be remembered that the omission of ecclesiastical marriage norms in the Law of Jutland has been interpreted as a sign that marriage was firmly under ecclesiastical jurisdiction in medieval Denmark as early as 1241.

Through his decretals, Pope Innocent III had, after all enabled the church to act *ex defectu justitiae* if the secular courts neglected to act in a case or offered no remedy. The Church was especially bound to protect the so-called *miserabiles personae*: the poor, the weak and the defenceless, disabled, widows, orphans and so on.¹³⁴ So, this guardianship of the defenceless was to be shared with the secular power, and kings also wished to portray themselves as the protector of the *miserabiles personae*. This approach was indeed adopted by the English kings and eventually developed into their Court of Chancery.¹³⁵ The Law of Jutland declared that king of Denmark was ultimately the defender of pilgrims, foreigners, the poor, widows and defenceless orphans.¹³⁶ The Swedish kings were also self-declared custodian of widows, orphans and old men, at least according to the late-thirteenth-century statute of Skänninge. Yet there is little evidence to indicate that the Swedish kings championed orphans' freedom of marriage despite their declaration, which represented typical medieval expectations of idealized good kingship.¹³⁷

Despite some mentions in the provincial laws, Swedish law did not extend the protection of the fatherless maiden as far as Danish law did. Nevertheless, she risked disinheritance only if her parents were alive and thus she could afford to defy any other guardian, including brothers. Medieval Swedish society came to reject those legal measures adopted in most of the western Scandinavian laws that restricted the powers of the woman's parents or those of her marriage guardian. The possibility to grant a parentless woman the explicit right to marry whom she wished was not adopted in Swedish law. Neither were the setting of age limits (for instance twenty or twenty-five) at which the daughter could marry without parental consent, or the adoption of positive

¹³⁴ Helmholz, *The Spirit*, 118–134. See also Trexler, *Synodal Law*, 137.

¹³⁵ On this, see e.g. Maitland, *Equity*, 3–6.

¹³⁶ *JL*, foreword, 2–5.

¹³⁷ *DS I*, doc. 813, 669; Bååth, *Bidrag*, 103.

legal mechanisms enabling a woman to marry despite her brother's or relative's veto because of her inheritance.

Although some Swedish provincial laws addressed the conflict arising out of the refusal of a brother or relative to allow a woman to marry in order to maintain control over her inheritance, this problem did not find any response in the late medieval royal laws. This might be an indication that the secular Swedish elites did not find it advantageous to incorporate such legal recourses into royal laws. Consequently, while their brothers could marry anyone they wished without legal sanctions, Swedish unmarried women of all ages were under the power of their marriage guardians, especially their fathers, who could disinherit them for unauthorized marriage or fornication.

In fact, another piece of evidence of the tendency to strengthen Swedish patriarchalism might be the punishment for violation of a virgin (*mökränkning*) that which was introduced in Sweden in town laws and then adopted in the 1442 law. The former smaller fines, usually three marks, were replaced with a forty-mark fine, which was perceived as compensation to the woman's marriage guardian for the despoilment of the woman's virginity. The fine was reduced to half if the man was prepared to marry the 'damaged' woman and remedy the situation.¹³⁸ In the light of this evidence, Sweden may even have been the most conservative and patriarchal country in medieval Scandinavia.

Being in Control: The Roles of the Marriage Guardian and the Priest

Originally, in earlier medieval Europe, the role of the priest in the nuptial ceremonies was discreet. He was more a special witness than an active participant in the rites, while the woman's father, guardian or head of family gave her away to the groom and joined the hands of the couple. Late-medieval marriage litigation often depicts the scene in which the clandestine exchange of consent took place in a private house with a senior man as master of ceremonies. He asked whether the couple was free to contract with each other, instructed the couple

¹³⁸ *MESL*, G 2:3, 38; *SL 1387*, G 2, 15; *KiL*, G 3:1, 44: the fine was divided equally between the woman's father as the injured party, the king and the hundred. Cf. *MEL*, Å 15, 62–63 and *KiL*, Å 15, 56–57: the three-mark fine was paid to the woman's guardian alone. Norwegian law also contained a section concerning violation of or 'offences' against virgins, but researchers have interpreted it so that the intercourse was tantamount to a promise of marriage, Johansen, "Marriage or Money," 27.

on the proper words of consent and knew the correct rituals attached to the exchange of marital intentions.¹³⁹

The growing importance of the role of the priest was also apparent in marriage liturgy. In French manuals from *ca.* 1000, the woman's parents or relative gave her hand to the bridegroom, while priests performed the rituals at ecclesiastical benedictions of nuptials. At this stage, clerics only joined the hands together when the parents or relatives were not present. Later in the Middle Ages, manuals started to insist that the bride's father, mother or relative take the bride by the hand and hand her over to the priest, who as a middleman proceeded to give away the bride and solemnize the marriage. According to the wedding ritual, the priest also announced that he, instead of the bride's next-of-kin, joined the couple together. A similar development also occurred in England. The role of the priest to the 'joiner' (*iunctor*) of hands and people was a result of the southern French practice spreading to northern France and England in the thirteenth century. This was possibly a side effect of the theological and canonical dogma that parents have no power over their children's marriages.¹⁴⁰ Consequently e.g. in late medieval France, where the clergy had successfully campaigned to have priests commonly perform engagements, the court practice show that laymen officiating over a secular engagement or a clandestine marriage could be fined for presumptuously assuming the role of the cleric.¹⁴¹

This developing and increasing role of the priest in joining the couple together is also clearly present in the legal and religious iconography of marriage. In the eleventh and early twelfth century, the wedding was performed without ecclesiastical participation: the bride's father, not the priest, was the master of ceremonies. Similarly the location of the rite changed from the private house to the church door. In the twelfth century and the later Middle Ages, the priest is commonly portrayed as the central figure of the picture standing behind the couple. As the stage manager, he joined the couple's hand, supervised the marriage

¹³⁹ E.g. *Ein Urtheilsbuch der geistlichen Gerichts*, 12–13; Frensdorff, "Verlöbniß," 26–27; Cosgrove, "Marriage," 39; Duby, *The Knight, the Lady and the Priest*, 150–152; Introduction in *Love & Marriage*, 12, 38, 41; Ingram, *Church Courts*, 196; Carlsson, *Jag giver dig min dotter*, II, 96–97.

¹⁴⁰ Molin – Mutembe, *Le rituel*, 79–86, 92–97. See also Ritzer, *Formen, Riten*, 332–336; Carlsson, *Jag giver dig min dotter*, II, 26–27, 30–33; Knuutila, *Aviohito*, 335–336.

¹⁴¹ Flandrin, *Sex in the Western World*, 53.

vows and blessed the newly-weds.¹⁴² This imagery clearly depicts the Church's long-term aims: joining the couple together and blessing them without competition from the kin groups. No longer active participants handing over the bride to the groom, the relatives of both contracting parties were reduced to witnesses and onlookers.

The Swedish late medieval manuals represent the older tradition where the bride's marriage guardian gave her away in marriage to the groom and the priest, a neutral third party, uninvolved in the actual giving away of the bride, performed the rites. Possibly, the guardian even joined the hands of the bride and groom. Furthermore, this would have been in accord with secular law.¹⁴³ In the Swedish context it is understandable that the priests did not replace the legal guardians even in ecclesiastical rituals during the Middle Ages.

In Swedish wedding ceremonies the relationship between the priest and the bride's marriage guardian or *giftoman* was very important. The *giftoman* had a privileged position in the match being entitled to give away the woman and he was also entitled to possibly valuable gifts from the groom. Swedish medieval society seems to have assumed that the marriage guardian would attend the solemnization *in facie ecclesiae*, and his presence symbolized his tacit consent to the match. At least the betrothal, which could only be lawfully officiated by the marriage guardian, had to be performed in advance. In its regulation on the reading of the banns, the law of Södermanland insisted also that the priest inquire who the rightful marriage guardian was. A parallel section in the law of Uppland prescribed that the priest reading the banns had to ensure that the couple had been betrothed 'according to the law of the country'.¹⁴⁴ The priest's power to marry a couple was subordinate to the powers of the *giftoman*. Again, this is evidence of the compromises between secular and ecclesiastical law.

In fact, if a priest married the couple without the consent of woman's guardian, he was liable to a heavy fine. As the law of East Gothia put it, 'if a priest performs the marriage and the legal guardian is not present, he [the priest] robs him [the legal guardian] of his right of guardianship'. In such a case the legal guardian could sue the priest in the ecclesiastical forum. The priest had to pay a heavy forty-mark

¹⁴² E.g. Duby, *The Knight, the Lady and the Priest*, 150–152; Carlsson, *Jag giver dig min dotter*, II, 22–24. See also Ribordy, *Faire les noces*, 93.

¹⁴³ Knuutila, *Avoliitto*, 282–286, 307–310; Carlsson, *Jag giver dig min dotter*, II, 27, 31.

¹⁴⁴ SdmL, Kk 13, 21; UL, Kk 15:2, 25.

fine if he could not swear with seven other priests as his oath-helpers, that he had obtained the guardian's consent.¹⁴⁵ However, it would seem that this had changed by the mid-fourteenth century. Magnus Eriksson's Town Law and Law of the Realm stipulated that, after the priest of the bride's parish had read the banns on three consecutive Sundays, he could marry the couple without penalty. Nevertheless, the law insisted that the reading of the banns could only take place after the betrothal had lawfully taken place—in the presence of the marriage guardian and witnesses.¹⁴⁶ By insisting on the presence of the *giftoman* at the betrothal, the law safeguarded his interests. The wedding was only putting the agreement into practice. Moreover, after the banns the intention of the couple to contract matrimony was widely known.

The law of Uppland distinguished between a three-mark fine for 'usurping another person's rights of *giftoman*' and the forty-mark fine for marrying off a maiden without her lawful marriage guardian's consent.¹⁴⁷ The three-mark fine was thus the penalty for usurping the marriage guardian's right to betroth his ward, while the high, forty-mark fine had to be paid for unlawfully marrying off a woman.¹⁴⁸ The provincial law of East Gothia awarded by far the best protection to the guardian's interests. Not only did it protect the *giftoman* by punishing a priest marrying away his ward without his permission, it also protected him by punishing anyone who usurped his right to betroth the woman with a forty-mark fine. Finally the law also contained a very general paragraph against anyone betrothing, engaging or marrying a woman without the rightful marriage guardian's consent. This was evidently intended to punish a husband or fiancé who had contracted to marry to woman without obtaining the proper consent. The penalty was a forty-mark fine, divided equally into three between the guardian as the injured party, the king and the hundred. If the woman owned real property, the guardian could withhold it until the woman's husband had paid him his third: thirteen marks and eight *öres*. On the other hand, if the woman did not own any land, her injured guardian could take her husband to the assizes in order to get the money or there have him declared an

¹⁴⁵ ÖgL, G 6, 102. See also ÖgL, G 6:1, 102–103.

¹⁴⁶ MEL, G 2:3, 39; KgL, G 2:3, 44; MESL, G 2:2, 38; SL 1387, G 2, 15.

¹⁴⁷ UL, Å 1, 63. See also VmL, Å 1–1:1, 43.

¹⁴⁸ VgL II, Add. 8, 383.

outlaw.¹⁴⁹ Several other laws contained similar penalties.¹⁵⁰ Although the inherent tensions between the marriage guardian's authorization, the priestly office of solemnization and the freedom of marriage were eased in later medieval Swedish laws, they did not completely disappear. The will to safeguard the marriage guardian's privileges manifested itself in pecuniary penalties for disregarding them.

3.3 *Increasing Ecclesiastical Control of the Betrothal*

Breaking Betrothals: The Exercise of Episcopal Power and Control in Late Medieval Sweden

When matrimonial causes came under ecclesiastical jurisdiction in Sweden, the Church obtained the right to make and break betrothals and marriages. In fact, along with its insistence on the consent of women, the introduction of the canonical impediments and wedding *in facie ecclesiae*, the episcopal control over betrothals has been interpreted as one of the first signs of the ecclesiastical influence on marriage in the medieval Swedish provincial laws. For the Church, all these were means of weakening the hold of the kin groups on marriage.¹⁵¹ While the indissolubility of matrimony was a basic tenet of ecclesiastical marriage dogma, theoretically at least a betrothal or *sponsalia de futuro* could be broken either through mutual consent or unilaterally.

The betrothed party could validly marry another, enter a monastery or betroth another followed by intercourse, which created a presumptive marriage.¹⁵² Thus the promise in the future tense could be broken by present-tense vows. If, however, one person had contracted *de futuro* with two (or several) persons, (s)he had to adhere to the first.¹⁵³ It has been observed that canon law never fully differentiated between the grounds for annulment and dissolution of an engagement and thus the practice was also somewhat confused.¹⁵⁴ If either took religious vows after the engagement or deserted his/her fiancé(e), the initiated union could be dissolved.¹⁵⁵ If either contracted an illness, such as leprosy, was

¹⁴⁹ ÖgL, G 4, 6–6:1, 101–103.

¹⁵⁰ GL, 21:1, 223. MEL, G 2:1, 39; KtL, G 2:1, 43; MESL, G 2, 38; SL 1387, G 2, 15.

¹⁵¹ Pykkänen, "Avoliiton historiaa," 80–81, 86–87.

¹⁵² X 4.1.2, X 4.1.9, X 4.1.31; X 4.4.1.

¹⁵³ X 4.1.22; X 4.2.14.

¹⁵⁴ Lefebvre-Teillard, *Les officialités*, 154–155.

¹⁵⁵ X 4.1.16; X 4.1.5.

paralysed or was severely injured, e.g. lost his/her nose, the other party could petition for a dissolution. In the event of a supervenient affinity by intercourse with a relative of one's fiancé(e), mere common fame of the sexual relationship sufficed as proof.¹⁵⁶ Likewise a dissolution was granted if either party fornicated with another or if the couple mutually wished to break off the engagement.¹⁵⁷ If either or both parties had been minor when the contract was made, and after reaching majority, repudiated the match without ever consenting to it e.g. by consummation, no marriage had been created.¹⁵⁸ In French ecclesiastical court practice even the non-payment of the promised dowry constituted valid grounds for dissolution.¹⁵⁹

The rule in medieval Sweden was that 'nobody shall have the right to dissolve [a] betrothal, unless real impediments exist, and the bishop shall have the power over its dissolution'. Betrothals were regularly broken by bishops at the instigation of one or both parties, or *ex officio*.¹⁶⁰ Practically all the Swedish provincial laws maintained that a fine was to be paid for each broken engagement, regardless whether the dissolution was caused by an impediment or by the wishes of the parties. The law of Uppland stipulated that both parties of a betrothal broken by the Church were to pay three marks each to the bishop. However, if only one party wanted to go back on the contract and the other did not, the former party had to pay the whole fine.¹⁶¹ However, the Laws of the Realm only mention a three-mark fine to be paid to the bishop by the party wishing to break off the engagement. If the decision was unanimous, each paid three marks.¹⁶² The guilty party lost his or her betrothal gifts, but if the breaking up was unanimous or guilt lay on both sides, both parties lost half.¹⁶³

¹⁵⁶ X 4.8.3; X 4.13.2, X 4.14.2, X 4.2.5.

¹⁵⁷ X 4.1.2.

¹⁵⁸ X 4.2.8.

¹⁵⁹ Lefebvre-Teillard, *Les officialités*, 160.

¹⁶⁰ SdmL, G 1, 64; HL, Kk 15:1, 269, HL, Ä 1:4, 303.

¹⁶¹ UL, Kk 15:1, 25. See also UL, Ä 1:3, 64. VmL, Kk 20, 14–15; HL, Kk 15:1, 269, cf. HL, Ä 1:3, 302–303. For episcopal practice, see also 17.9.1524, 262, *BHBR*, 329–330; 7.2.1525, 304, *BHBR*, 358–359.

¹⁶² SdmL, Kk 15:3, 22; VmL, Ä 1:3, 44; ÖgL, Kk 18, 19; VgL I, G 2:1, 96; *MEL*, G 2:6, 40; *MESL*, 2:5, 39; *SL 1387*, G 2, 16; *KrL*, G 2:5, 44.

¹⁶³ HL, Ä 1:3, 302–303; UL, Ä 1:3, 64; VmL, Ä 1:3, 44. *MEL*, G 2:2, 38; *KrL* G 2:2 and 2:5, 43–44. Cf. Evans-Grubbs, "Marrying," 66–67, 72; Lefebvre-Teillard, *Les officialités*, 161–162.

The unilateral breaking of one's word, once it had been given, was likely to arouse suspicion of the other partner's physical abilities and morals. Because a physical deformity or illness was sufficient cause to break off the engagement, the law of Västmanland insisted that the party wishing to do so had to return all the betrothal gifts and pay a three-mark fine. In addition, he or she had to swear with the aid of twelve oath-helpers that he 'knew as little of any physical deficiency or fault in her or her kin as when he had betrothed her'.¹⁶⁴ Since the canonical impediments of marriage had found their way into Swedish society, a marriage guardian having second thoughts about the match could have the betrothal broken by evoking the existence of an impediment. However, he also risked a penalty. The marriage guardian was fined three marks if the betrothal was dissolved because of spiritual affinity. Obviously, the couple was presumed to be more ignorant of this than the marriage guardian, but they themselves were fined if the dissolution was caused by consanguinity.¹⁶⁵

The law of Dalarna stipulated that if one party denied the existence of the betrothal, the other party could prove it by two witnesses and a twelve-man oath.¹⁶⁶ If there was unanimity between the parties whether or not a betrothal had taken place between them, or if either had contracted in defiance of an ecclesiastical prohibition to solemnize with another, pending litigation, this was punishable in the law of Uppland. Both the parties of the second betrothal or marriage were liable to a three-mark fine, unless the new fiancé(e) could prove him/herself ignorant of the former betrothal with the aid of ten compurgators.¹⁶⁷ It seems that this three-mark fine, divided between the injured party, the church and the bishop, was to be paid whenever when a betrothed person gave his troth to another before the first had been broken off. The law called this 'putting betrothal gift on betrothal gift'.¹⁶⁸ If the bride happened to be the twice-betrothed party, her legal guardian was to pay a similar fine. In addition, the second bride or groom was to pay a three-mark fine to the bishop unless he or she could find six oath-helpers to testify to his or her ignorance of the prior contract. If the woman's legal guardian betrothed her to two men, he had to pay

¹⁶⁴ VmL, Å 1:3, 44.

¹⁶⁵ VgL II, Kk 52, 215.

¹⁶⁶ DL, G 1, 78.

¹⁶⁷ UL, Kk 15:1, 25, Å 1:4, 64; VmL, Kk 20, 15.

¹⁶⁸ HL, Kk 15:1, 269; UL, Å 1:1, 63-64.

a forty-mark fine: half to the king, half to the town. Even the second groom had to pay the bishop a three-mark fine if he was unable to prove with the help of two compurgators that he had acted in good faith, not knowing of the first betrothal.¹⁶⁹

The so-called statute of King Magnus Ladulås insisted that if a man betrothed a maiden who was another man's lawfully betrothed bride, he was sentenced as if he had committed adultery. The fine was forty marks and six marks to the bishop.¹⁷⁰ In the Laws of the Realm the forty-mark fine was to be divided equally between the bishop, the king, the hundred and the injured party. This might well have been the practice all along.¹⁷¹ Such a case was considered triable in the secular court, although by its nature it was being a mixed forum case. The royal Laws of the Realm had been altered in three respects: firstly, the legal guardian who had betrothed the woman to two men was punished with a forty-mark fine. Secondly, the man who had knowingly pledged his troth to an already betrothed woman was punished with a three-mark fine. Thirdly, any man or woman who pledged his or her troth to another before the first engagement had been dissolved was punished. The offence was more seriously punishable as it was explicitly linked with bigamy, and the fine was forty marks, which was the same amount levied against the legal guardian who had betrothed the woman to two men.¹⁷² For example, in Arboga Nils Japesson was fined 25 marks because he had been trothplighted to two women (*for två koner han tro loffde*).¹⁷³

The law of Uppland acknowledged the possibility that the maiden could accept the betrothal gift on her own behalf, which according to the law had been the privilege of the legal guardian. In this instance it appears that the maiden was liable to the three-mark fine levied against those who were betrothed without the consent of the guardian.¹⁷⁴ This indicates that the maiden was considered able to act independently and was no longer merely the passive object of a transaction between suitor and marriage guardian. An additional sign of this is that a bigamous bride was also held responsible for getting betrothed to two

¹⁶⁹ *MESL*, G 2:1 and 2:6, 38–39; *SL 1387*, G 2, 15–16. See also *VmL*, Ä 1:1, 43.

¹⁷⁰ 8, King Magnus Ladulås's statute on the peace of the church, witchcraft and adultery, printed in Åqvist, *Kungen och rätten*, appendix.

¹⁷¹ *MEL*, G 2:2, 39; *KrL*, G 2:2, 43–44.

¹⁷² *MEL*, G 2:2, 39; *KrL*, G 2:2, 43.

¹⁷³ 17.4.1510, *AST III*, 230.

¹⁷⁴ *UL*, Ä 1:1, 64.

men, not only her legal guardian. These sections seem to be novelties, and I would see in them a sign of the steadily growing influence of the Church's consent theory. The legal practice might also have placed more stress on the actions of the individual than on those of the legal guardian. Moreover, the laws certainly reflected the fact that men betrothed themselves.

More than half of the matrimonial cases in the register (1522–1527) of Bishop Hans Brask of Linköping dealt with the breaking of an engagement on the initiative of either or both fiancés. The dissolution of engagements was thus overwhelmingly frequent in comparison with the other common causes: separation from bed and/or board and marriage guidance.¹⁷⁵ The Swedish late medieval practice of dissolving betrothals does not seem to have been very strict in comparison to certain French regions: no matter what the reason was, the engagement was indissoluble even unilaterally as long as the union had not been consummated.

In certain regions, however, the Church had adopted a more restrictive stance: the engaged couple was under an obligation to solemnize normally within forty days on pain of various sanctions ranging from excommunication to a prison spell.¹⁷⁶ In the medieval diocese of Troyes in France, for example, the Church did not necessarily accept unilateral breaking of betrothals. In other ecclesiastical courts, engagements could be terminated if the couple made a mutual request that their engagement *de futuro* be broken although they were fined for not keeping their troth. The innocent party requesting the termination of the betrothal could be fined regardless of the reason, e.g. physical abuse. If one party wished to break off the engagement, the request was only occasionally granted, provided that some objective reason could be shown, while on other occasions the unilateral request to dissolve the betrothal was denied. In an effort to explain why this strict regime was necessary when no indissoluble bond or sacrament had yet been created, Beatrice Gottlieb has pointed to the influence of the doctrine of consent on even an informal promise of marriage. The emphasis on consent made the Church the 'upholder of marriage', which exercised its control through

¹⁷⁵ Cf. Lefebvre-Teillard, *Les officialités*, 110.

¹⁷⁶ Lefebvre-Teillard, *Les officialités*, 152–153. See also Donahue, *Law, Marriage, and Society*, 449.

its courts.¹⁷⁷ According to Lefebvre-Teillard, on the other hand, the medieval canonists were aware of the discrepancy between the freedom of consent and the suits of enforcing future-tense vows. Consequently, they distinguished between simple and sworn engagements, while only the latter authorized the use of force towards a recalcitrant fiancé(e). Canonists recommended judges to act with moderation, and the late-medieval French courts rarely seem to have resorted to constraint.¹⁷⁸

Most of the canonical grounds for breaking an engagement appeared in the Swedish register. Practice shows that bishops broke off engagements due to certain grave illnesses or physical deformities, and one betrothal was dissolved because of fiancé's impotence, whereas the bride was allowed to marry another.¹⁷⁹ Some betrothals were broken because either party had earlier contracted with another, as in the case of Nils Vestgöte, servant of Bishop Hans Brask. His engagement to Katarina Andersdotter was broken because Nils had first pledged his troth to another Katarina, also the bishop's servant.¹⁸⁰ The engagement between Anders Olofsson and widow Christina Jönsdotter was broken because of her precontract: she had previously got engaged to Olof Sivedsson and had intercourse with him (*desponsavit et condormivit*).¹⁸¹ Elin Bengtsdotter had first become engaged to Sven Larsson and then she had pledged her troth to Peder Johansson. The first union was broken and Elin and Peder asked for a licence to solemnize. Birgitta Arvidsdotter had likewise pledged her troth to two men: her secret engagement (*occulta affdatio*) to Peder Nilsson was broken and she was allowed to marry Peder Staffansson, who had betrothed her publicly.¹⁸²

Either party's infidelity was sufficient cause for backing out of a betrothal. The formulary of Linköping contained a formula for the dissolution of a *sponsalia de futuro* when the bride had committed fornication with another.¹⁸³ It sometimes occurred that rumours began to circulate that either party had had sex with another or the woman was no longer a virgin. If the bride had been impregnated by another

¹⁷⁷ Gottlieb, "The Meaning of Clandestine Marriage," 59–60, 63–64, 67–68. For Poland, see also Brozyna, *Ecclesiastical Courts*. Cf. Lévy, "L'officialité," 1273.

¹⁷⁸ Lefebvre-Teillard, *Les officialités*, 154.

¹⁷⁹ Acta Iudicii synodalis 1526, 440, *BHBR*, 464.

¹⁸⁰ 1524 Judicium synodale, 238, *BHBR*, 307. For the Orthodox Church, see Levin, *Sex and Society*, 89–91.

¹⁸¹ 6.6.1524, 229, *BHBR*, 298.

¹⁸² 29.4.1525?, 336, *BHBR*, 388; Acta Iudicii synodalis 1526, 440, *ibid.*, 465.

¹⁸³ E.g. *FL*, doc. II 42, 73.

man, this certainly was sufficient cause for ending the engagement. So Anders had no difficulty in managing to break his betrothal to Helga, deflowered by and carrying the child of the cleric Nicolaus Olavi of Stockholm, before consummation.¹⁸⁴ The same naturally applied to impediments of (supervenient) affinity if the sexual partner was a relative of the fiancé(e). The broken betrothal of Lars Olofsson and Margareta Larsdotter of Falleboda was caused by his relationship with her cousin.¹⁸⁵

While even other crimes subsequent to the betrothal constituted valid reasons for undoing the initiated bond, the party wishing to disentangle himself from the relationship could expect some additional penalties for breaking the vow. When, for instance, Bishop Hans Brask of Linköping broke off the betrothal of Katarina Olofsdotter and Hemming Birgersson at Katarina's and many her friend's (*amicis*) insistence because the latter been caught several times for theft, she was to pay the bishop sixteen marks—a very high price indeed—for the right to contract with another.¹⁸⁶ In comparison to the three-mark fine prescribed by the secular law, this fine seems exorbitant.

If one party had abandoned his/her fiancé(e), the latter could request that (s)he be released from the promise. However, this was only possible if consummation had not occurred. On occasion, however, people are explicitly mentioned as having been forced to swear with compurgators that they had not had sex with their fiancé(e)s.¹⁸⁷ The register of Bishop Hans Brask of Linköping (1523–1527) reveals some cases in which the betrothal had been concluded nine or seven years previously. In both cases the fiancés had deserted their brides who, having waited in vain for many years for their return, petitioned for permission to contract with another.¹⁸⁸

Judging by the evidence of Bishop Hans Brask's register, the Swedish bishops respected the freedom of choice by breaking betrothals even at the adamant insistence of only one party without proper cause. The court usually sought to establish who was to blame for the breach in

¹⁸⁴ 14.11.1401, *SD IV*, suppl. 1–2, doc. 2891, 37. See also 1.8.1524, 247, *BHBR*, 313.

¹⁸⁵ 1524 *Judicium synodale*, 238, *BHBR*, 307; 19.10.1523, 130, *ibid.*, 206. See also 28.10.1526, 480, *ibid.*, 513–514.

¹⁸⁶ 3.6.1523, 72, *BHBR*, 161.

¹⁸⁷ 30.3.1527, 517, *BHBR*, 549–550. For similar practice in France, see Lefebvre-Teillard, *Les officialités*, 162.

¹⁸⁸ *Acta Iudicii synodalis* 1526, 440, *BHBR*, 464–465; 1524 *Judicium synodale*, 238, *ibid.*, 307–308. For France, see Lefebvre-Teillard, *Les officialités*, 159–160.

order to prescribe penance or impose a fine. Either or both could be punished according to the deliberation of the court.¹⁸⁹ These Swedish cases of dissolution of engagements were largely based on canonical grounds for breaking the initiated bond.¹⁹⁰

In such cases, (s)he who willed the breakup was more heavily fined and had, in addition, to perform penance for breach of faith. The betrothal of Matts Persson and Elin Johansdotter was broken evidently at Matts's request, as Elin refused to go through with the wedding. Matts was awarded the right to contract with another, while Elin was ordered to fast and perform penance for breaking her vow. As a further sanction, she was forbidden to marry anyone during that time.¹⁹¹ Breaking one's vow (*fractor votis*) and marrying one person after being betrothed to another were considered sins that required episcopal absolution.¹⁹² This corresponded with the general practice. The fiancé(e) who refused to go through with the wedding was to be exhorted to respect the oath, but force was not to be used because marriage was to be freely entered into. If an engagement was broken, however, penance for perjury was to be imposed on the party causing the rift or breaking his oath. This penance for perjury for breaking one's oath to marry rested on a similar basis as that for breach of faith (*fidei laesio*) as when a promise or oath had been broken resulting from the non-payment of debts.¹⁹³

As a whole, the practice of the early sixteenth-century diocese of Linköping suggests that in Sweden it was relatively easy to have a betrothal or trothplight dissolved. The source shows no traces of constraints used against the parties, but a frivolous refusal to honour the promise resulted in penance and/or fines. If a system of public summons¹⁹⁴ in order to locate a disappeared bride or groom existed in

¹⁸⁹ E.g. 15.3.1523, 28, *BHBR*, 123; 29.10.1523, 136, *ibid.*, 210; 23.8.1524, 254, *ibid.*, 320.

¹⁹⁰ See also Lefebvre-Teillard, *Les officialités*, 154–163.

¹⁹¹ Acta Iudicii synodalis 1526, 440, *BHBR*, 464. See also 1524 Judicium synodale, 238, *ibid.*, 307.

¹⁹² Regulations concerning penance, diocese of Skara, *Beiträge zur Geschichte des Buss- und Beichtwesens*, xvi.

¹⁹³ X 4.1.17; X 4.1.31; *BD*, docs. 20–21, 21–22. Wunderli, *London Church Courts*, 104–108; Ingram, “Spousals Litigation,” 41. See also Helmholz, *Marriage Litigation*, 35–36.

¹⁹⁴ In a Hungarian case in which the bridegroom had disappeared before both wedding and intercourse, the ecclesiastical judge investigating the case wrote a circular to all the bishops of the country. The bishop, in whose diocese the groom lived, was to force him to return to his bride by using ecclesiastical censure. When one of the bishops, however, announced the death of the groom, the ecclesiastical judge had him publicly

medieval Sweden, it has left very little traces in the sources. Probably an absence of several years spoke for itself.

Trothplight: Intermingling of the Swedish Betrothal and Ecclesiastical Sponsalia

In the late Middle Ages and the sixteenth century a new word, *trolova*, appeared in the Swedish vocabulary. In 1524, for instance, King Gustav I Vasa wrote a letter announcing that Count Johan of Hoya had 'betrothed and trothplighted' (*fäst oc trolöffuet*) his dear sister Margareta.¹⁹⁵ In this example the two words were used as complements, but in the course of the sixteenth century, *trolova* became more and more common. Swedish scholars have used the two interchangeably.¹⁹⁶ But are the two completely synonymous? What exactly did *trolova* mean and why did it appear in the language? This calls for a more careful survey of the late medieval situation.

The Swedish marriage process did not remain immune to the influence of ecclesiastical notions and the novel institution of trothplight (*trolöfnader* or *trolöfning*) is a good example of the interaction of the secular and the ecclesiastical norms. The verb *trolova* meant firstly to promise solemnly, on one's faith and honour (the Latin equivalent of *trolöfware* was *fideiussor*). It came specifically to signify the solemn pledging of one's troth in marriage, the Latin equivalent of which was in some texts *dare fidem* or (*de*)*sponsare*. In comparison with *fästa* for betrothal, however, *trolova* is apparently later and originally closely connected to Christianity and religious terminology.¹⁹⁷ The expression seems to have been taken from certain German dialects (*Plattdeutsch*) and adopted by the Scandinavian languages: to pledge one's troth in good faith (*uppe Truwe unde Love*) became *trolova*. We are told that some Swedish couples 'pledged each other their troth and pledge' (*lofuade... huar andra troo och lofuen*).¹⁹⁸ In the Norwegian and Icelandic languages the words *sponsalia*

cited three more times on consecutive Sundays. Only after his non-appearance was the bride granted permission to contract with another, Erdö, "Eheprozesse," 261.

¹⁹⁵ 1524, *BHBR*, 335.

¹⁹⁶ E.g. Söderlind, "Svenska," 8–9; Söderlind, "Trolöfning," 56–57; Carlsson, *Jag giver dig min dotter*, I, 49–51, 59–63; *ibid.*, II, 3, 5; Gaunt, *Familjeliv*, 67–71. See also Sundin, *För Gud*, 129–130.

¹⁹⁷ Söderwall, *Ordbok*, II.2, 672–673: for example, the word was used in a spiritual sense for the mystical betrothal between a person and Christ or God.

¹⁹⁸ Troels-Lund, *Dagligt liv*, III:IX, 8–9; Schiller – Lübben, *Mittelniederdeutsches Wörterbuch*, 620–623: *trouwe* or *truwe* was the noun 'trothplight', while the verb to pledge one's troth was *truwen*. See also Löth sochen, *VAA*, 41; *CEAP*, 132.



5. *De nobilium nuptiis* by Olaus Magnus Gothus. Roma, 1555. In Sweden, the ring was usually mentioned in connection to engagements (betrothal or trothplight). These were supposed to take place in a familial setting, in the presence of parents and witnesses. Moreover, gifts such as rings were to be given on the occasion.

and *sponsus/sponsa* left their imprint: *púsa*, to espouse or to marry, *púsan*, spousals, *púsa* and *púsi*, bride and groom, appeared by the thirteenth century first in translated French literature and later also in ecclesiastical language.¹⁹⁹ This apparently did not take place in medieval Swedish.

In fact, trothplight was a popular version of the ecclesiastical *sponsalia*, and the canonical doctrine was behind the creation of the institution of trothplighting. The emphasis on the couple mutually pledging their troth indicates the creation of a personal bond between the parties themselves, not involving their families, although in practice witnesses were often present. The formlessness of trothplighting also suggests that the ecclesiastical ideology of *sponsalia* had permeated it in contrast to the formality of the betrothal. This development puts Sweden firmly into an international context. Namely, a similar waning of betrothals, meaning the future relinquishing of the guardian's power over the woman to the husband, and the rise of trothplighting, mutual pledging of fidelity and troth, took place all over the medieval Catholic world. Due to the influence of the Church, in many European regions a mutual exchange of consent, sometimes accompanied by token gifts of coins, rings, pieces of clothing and so on, became more and more dominant. In regions where rituals and legal formalities had been customary, these were being slowly replaced by the mutual and personal creation of the bond. There is evidence that this was happening for example in England, France and Bohemia.²⁰⁰

In a larger European perspective, one may observe that the pledging of troth or *sponsalia* was linked to certain gestures and actions with legal contents. Such were the joining of the hands of the two contracting parties as a symbol of consent, an exchange of gifts or tokens or a pledge given by the man and accepted by the woman.²⁰¹ The English spousals could be either a private or a public and formal occasion. In the latter case, the consent of the parties was given in front of assembled kin and friends, the woman was given by her male relative or substitute kin to the man, and there was a dinner, '*bankett*' or '*trothinge feaste*'.²⁰² The same applied to the Continental handfasting ceremonies,

¹⁹⁹ Jochens, "Consent," 167–169; Jochens, *Women*, 42, 51.

²⁰⁰ Köstler, "Ringwechsel," 19–22; Klassen, "Marriage and Family," 261–262, 265–266. For the French customs see Burguière, "Le rituel du mariage," 642–644; Flandrin, *Sex in the Western World*, 59–60.

²⁰¹ Introduction in *Love & Marriage*, 22, 38–40, 43, 51, 60, 68–69; Sheehan, *Marriage, Family and Law*, 56–58. See also Arnórsdóttir, "Marriage," 183.

²⁰² Peters, "Gender, Sacrament and Ritual," 84.

créantailles, and others. They could be more formal occasions including publicity, exchanges of gifts as pledges and parental consent, or alternatively informal private occasions in which the gifts given could be less formal, or even humorous, such as a flower, a pear, a sip of wine or a kiss offered and accepted ‘in the name of marriage’ (*nomine matrimonii*). These rituals had borrowed from religious rites.²⁰³

Although betrothal (*fästning*) and trothplight (*trolöfning*) came to be used alternatively and at least partly synonymously in everyday Swedish parlance, especially since the sixteenth century, intellectually the two must be kept distinct from each other. This is important in order to accentuate some of the profound original differences between the two institutions. Betrothal (*fästning*) required the observance of certain formalities: the presence of the woman’s legal guardian, several witnesses from both families, the groom, and later also the woman herself. The gifts from the groom to the bride’s family also belonged to the betrothal. Trothplight or *trolöfning*, was a less formal occasion, unmentioned in the medieval secular laws. It points rather to an informal exchange of consent, probably usually *de futuro*, but possibly also *de praesenti*. No witnesses needed to be present, although often there were some. Normally the groom gave the bride gifts, or the couple exchanged gifts as mutual pledges.

The presence of the bride at the betrothal had originally been superfluous, as the legal act was performed by the groom and by the bride’s marriage guardian, the kinsmen of both attending. The suitor asked the woman’s marriage guardian that she be given to him as his wife and he replied in the affirmative or negative. In contrast, the trothplight presupposed the presence of the principal contracting parties, the bride and groom, as they personally promised to marry each other. Although friends, kinsfolk and other witnesses were often present, their attendance was no precondition. To simplify, the betrothed woman was the passive object of the legal act between her suitor and her guardian, while in accordance with canon law, the trothplighted woman actively exchanged mutual marriage promises with her future husband. Thus, she exercised her right to engage in legal acts as a

²⁰³ Lefebvre-Teillard, *Les officialités*, 150–151; Burguière, “Le rituel du mariage,” 642–644; Flandrin, *Sex in the Western World*, 51–63; Lévy, “L’officialité,” 1268. See also the synodal statutes of Bishop Nicolas Gellent of 1277, *Les statuts synodaux II*, 110–111.

subject and player. Instead of being given and taken in marriage, she trothplighted herself.²⁰⁴

Although the significance of the betrothal gifts or 'friend gifts' from the groom to the woman's kin and her marriage guardian in particular seems largely to have been lost in the course of the Middle Ages,²⁰⁵ the groom's gift to the bride or mutual gifts probably came to replace it.²⁰⁶ While the friend gift was mentioned in many provincial laws, it disappeared from the mid-fourteenth-century royal laws, issued by King Magnus Eriksson. Still, not even the mutual gifts between the fiancés was mentioned in the laws.

This transformation of the betrothal gifts can be interpreted as a sign that the consent of the parties was the only necessary prerequisite for the formation of a marriage. The informal trothplight of the parties themselves and the gifts as pledge came to rival the formal betrothal with its gifts and parental consent. Although the betrothal maintained its legal status for centuries, the late medieval transformation of the betrothal gift was permanent. The gifts given as pledges at the trothplight had a different legal character from betrothal gifts. The betrothal gifts (or 'friend gift'; *vångåva*) were given by the groom to the bride's relatives and her legal guardian, whereas at the trothplight both the bride and groom gave gifts to each other only and to nobody else. The betrothal gifts were unilaterally given, possibly as rudimentary remnants of a former bride price, as signs of friendship, to ensure the bride's guardian's and relatives' acceptance of the future union and to bind the groom and the bride's relatives to the completion of the marriage process. By contrast, the trothplight gift was given reciprocally: the giver gave a pledge to the other of his or her constancy and faith, while the recipient accepted it as a sign of assent.

Little is known of the gifts given by the parties at the trothplight in medieval Sweden. The gifts given at trothplight naturally varied depending on the wealth of the parties. However, we know more about what was given at trothplight than we know about 'friend gifts', as the couple often ended up returning the gifts they had given each other when the engagement was broken. The groom often gave his bride

²⁰⁴ See also Schwarz, *Die Bedeutung der Sippe*, 29–30.

²⁰⁵ No mentions of such gifts can be found in medieval Swedish documents apart from the laws.

²⁰⁶ Cf. Carlsson, *Jag giver dig min dotter*, I, 63–65.

pieces of jewellery.²⁰⁷ Occasionally the gift could be of high value, like the silver belt worth fourteen marks given by Laurens the Goldsmith of Stockholm to his wife Katherina ‘when he betrothed her’ (*tha han henne festhe*).²⁰⁸ The more numerous sixteenth-century documents provide more information about gifts commonly given. Men nearly always gave gifts at trothplights, while the same did not apply to women. In cases mentioning reciprocal gifts, those given by men were usually more valuable than the female counterparts. On one occasion, the man who wished to marry a woman gave her a ring, while she gave him a shirt.²⁰⁹ Gifts such the ‘bridegroom’s shirt’ (*fästmansskjorta*) were customarily made by the bride. Some scholars claim that this was customary already in pagan times.²¹⁰ This disparity probably also reflects the better opportunities men had to earn money than their female counterparts.

When trothplight became an important legal ceremony and was even acknowledged as such in law, the gifts given at the ceremony were of increased importance. Indeed, if the suitor did not possess suitable gifts himself, he could borrow them.²¹¹ In Sweden the giving of the ring was usually associated with the trothplight despite its being a secular and ecclesiastical symbol of mutual loyalty and fidelity. In many territories, as for example in Italy, rings were generally associated with matrimony, but regional customs differed and in Sweden (and Scandinavia in general) rings were connected with the engagement. For example, Laurentius of Vaksala speaks of the ring as a pledge for future marriage: the parties contracting in the future tense could give a ring, money or other items as pledges. Moreover, in a matrimonial cause from 1419 the man was said to have trothplighted a woman by giving her a ring (*per tradicionem annuli desponsavit*).²¹²

²⁰⁷ Almquist, *Svensk rättshistoria*, 105. See also Heikinmäki, *Suomalaiset häätavat*, 98–111.

²⁰⁸ *SST IV*, 7.7.1505, 72.

²⁰⁹ 2 and 20.5.1592, *VST*, 158. Making clothes, especially sowing a shirt for a man symbolized love and loyalty in medieval Iceland, Bandlien, *Strategies of Passion*, 89–90, 257.

²¹⁰ Almquist, *Svensk rättshistoria*, 105; Heikinmäki, *Suomalaiset häätavat*, 111–113. See also Roper, “Going to Church,” 83.

²¹¹ ULA, Strängnäs stads tänkebok 1530–1596, Strängnäs rådhusrätt och magistrat A I:1, 74v = ULA, Strängnäs stads tänkebok 1553–1639, Strängnäs rådhusrätt och magistrat A I:2, 6v.

²¹² UUB, Summa de ministris, Cap. xix, de matrimonio, 210 r; 3.7.1419, *SD III*, doc. 2794, 587; Carlsson, *Jag giver dig min dotter*, I, 62, 64–70. See also Köstler, “Ringwechsel,” 4–5, 10–11; Klapisch-Zuber, *Women, Family and Ritual*, 196–197; Ribordy, *Faire les noces*, 94–95.

However, it should be observed that the gift of the wedding ring from the groom to the bride also formed part of Swedish ecclesiastical wedding rituals as was customary all over Europe.²¹³ Yet, trothplighting was a separate institution from the betrothal also in the sense that it by no means replaced the traditional legal act of betrothal. It could be either alternative or additional to the betrothal, but these two could also mingle, so that in addition to the gifts given to the bride's kin, the groom could exchange gifts with his bride. Moreover, it was possible to have both ceremonies separately, but in these cases it would seem that the trothplight preceded the betrothal, not vice versa.²¹⁴ Obviously, the more informal agreement could predece a more formal contract, but there would hardly be any sense in a reverse order.

It should be emphasized that the fact that mere words were all that was required to create an indissoluble bond had a revolutionary impact on medieval Sweden, in which legal formalities with many witnesses were the norm. The informality advocated by the Church was a potential disruptor of society. Legal forms helped to create certainties and established facts that could easily be proven, while the evils of formlessness in clandestine contracts have long been known to researchers just as they were to medieval people. The Church thus opened the doors to deceit and confusion on an unprecedented scale even in Sweden. Unlike in England, however, where the majority of cases involved clandestine present-tense vows, in Sweden the greater problem was the dogma that created marriages by intercourse after even informal future vows *de futuro*. Thus the Church, with all its ethical demands, became an abettor to any would-be seducer who wished to succeed in bedding an enamoured and careless maiden.

The summary *De septem sacramentis*, written in Sweden at the monastery of Vadstena around 1400, observed that many 'ribalds' promised and swore to unstable woman that they would accept them as their wives if they could have their way with them, but afterwards did not keep their word. Such clandestine exchanges of consent were not considered binding by the Church, although they were binding in front of God and the deceivers were perjurers.²¹⁵ The tradition of

²¹³ Knuuttila, *Avioliitto*, 319–335.

²¹⁴ This would also correspond to the French institutions of the more informal *cr  antailles* and the formal *fian  ailles*; if both were mentioned, the former always preceded the latter, Flandrin, *Sex in the Western World*, 58.

²¹⁵ *De septem sacramentis*, cap. VII, 201. See also Houlbooke, *Church Courts*, 66.

formalities and witnesses did not prevent tales of marriage promises on one side, denial of promises and admission to intercourse on the other, from appearing in sixteenth-century church court records. Still, it must be remembered that both men's and women's 'escape hatches' from unwanted promises were culturally constructed. While women would play the card of lacking parental consent, men resorted to the excuse that they had merely wished to bed the woman, not wed her. Thus, the woman claimed that he had promised to marry her, which the man denied. Unless witnesses testifying to the promise could be produced, the couple were considered to be unmarried.²¹⁶ Less sympathetic observers have considered future-tense-and-consummation marriage 'a stroke of luck for girls seeking after a husband'. A vague promise sufficed and the women were on their backs, being deflowered in the hope of matrimony (*in spe matrimonii*), although this was often a trap used by unscrupulous men. In this sense the doctrine of presumed marriage indirectly provoked a laxity of customs.²¹⁷

The ecclesiastical Latin terminology naturally also spread to medieval Sweden through papal letters and canonical literature.²¹⁸ However, the damage resulting from the confusion of concepts was probably limited by the strong dualism of the Swedish secular marriage process. Judging by the evidence, it seems to have been generally taken for granted that the trothplight was understood to be the equivalent of the betrothal, i.e. to correspond to *sponsalia de futuro*, unlike *sponsalia*, which could be contracted either in the present or in the future tense. Moreover, the context implies that *desponsatio* and *sponsalia* were normally used in Sweden in the future sense for engagement, betrothal or trothplight. The first mention of a *desponsatio* in a Swedish document dates from 1211, when the chieftain Ingemar betrothed (*desponsauit*) his daughter to P. Ebbeson in the monastery of Wä.²¹⁹ Although the nature of this act cannot be determined with certainty, it probably constituted a betrothal, whose importance and solemnity was emphasized by the presence of the archdeacon, the deacon, and many noblemen and clerics.

²¹⁶ McSheffrey, "I will never," 167; Introduction in *Love & Marriage*, 18; Gottlieb, "The Meaning of Clandestine Marriage," 58–62; Safley, *Let No Man Put Asunder*, 67–68; Klassen, "Marriage and Family," 268–269; Vleeschouwers-Van Melkebeek, "Self-divorce," 91; Donahue, *Law, Marriage, and Society*, e.g. 116.

²¹⁷ Lefebvre-Teillard, *Les officialités*, 174–175. See also Ingram, *Church Courts*, 267–268.

²¹⁸ For Denmark, see e.g. *BD*, docs. 20–21, 48, 19–20, 43–44.

²¹⁹ *DS I*, doc. 141, 164.

The fourteenth-century formulary of Linköping frequently uses the word *sponsalia*, which had in many cases been supplemented by the consummation of matrimony. This suggests engagement in the future tense, as was the case also when the *desponsatio* was followed by solemnization.²²⁰ The evidence shows that the dissolution of an engagement, however, meant just that: there had been a lawful betrothal, but consummation had not followed, and the union, having been contracted *de futuro*, was dissoluble. Invitations to betrothals or weddings also distinguished between *desponsacio* or *nupcie* respectively.²²¹ The Swedish provincial statutes of 1412 forbade *desponsati*, in the sense of those who were betrothed or engaged, from having sexual intercourse before the reading of the banns and the ecclesiastical benediction. In the register of Bishop Hans Brask of Linköping *desponsare* seems to have been used in reference to betrothed or trothplighted couples: occasionally it was added that the woman was *affidata* only by *verba de futuro*, or that the *desponsatio* had taken place in the future tense.²²² Similarly the Latin translation of the Reformatory Ordinance of Västerås (1527) translated the term for a lawfully betrothed bride (*lagfesta hustru*) as *desponsata per verba de futuro*.²²³

The emergence of the institution of trothplight may be attributed to the increasing influence of the ecclesiastical notion of the couple's exchange of mutual consent as the constituent element of marriage formation. Nevertheless, in Sweden as elsewhere the Church was struggling for greater control of the impediments of marriage. The effects of the canon *Cum inhibitio* from 1215 on Sweden will be discussed below in Chapter 3.4. For the purpose of control, the customs of such regions as Sweden, where the medieval evidence suggests that marriage was made by betrothal and bedding, were highly problematic. Moreover, as ecclesiastical solemnization was considered so very optional in Sweden, the Church had to try to take control of the most important legal act in the making of marriage, the betrothal.

²²⁰ *FL*, e.g. doc. I 4, 46–47; doc. II 15, 64. See also *ibid.*, doc. II 17, 65; *ibid.*, doc. II 43, 73. One case is less clear as it mentions a *desponsatio*, consummation and the reading of banns, *FL*, doc. I 23. Likewise *ibid.*, II 44, 74.

²²¹ *FL*, doc. II 42, 73; *ibid.*, docs. II 55–57, 79–80.

²²² Statutes of the provincial council of Arboga 1412, 14.9.1412, *SD II*, doc. 1616, 542; *Judicium synodale* 1524, 238, *BHBR*, 307; *Acta Iudicii synodalis* 1526, 440, *ibid.*, 464.

²²³ 16, Ordinance of Västerås, *SRA I*, 92.

Ecclesiastical Betrothal: Fighting 'Clandestine' Betrothals and Improving Control

As time went by, the Church evidently became disappointed and disillusioned in its power to control the conjugal bond. The betrothal was the single most important element in the making of a Swedish marriage, perhaps more important than a mere *de futuro* contract. Swedish betrothals were usually private occasions, although clerics probably often attended them as relatives, as witnesses to their solemnity.²²⁴ Moreover, medieval Swedish society seems to have tacitly and indolently accepted sexual relations or even cohabitation after betrothal. In the eyes of the Church, this transformed the union into a marriage (*matrimonium prae-sumptum*) although to an outsider it could still look like a simple future contract until the wedding took place.

The Swedish Church turned more and more of its attention towards the betrothal, intending to bring it under its control. In this, the French Church was relatively successful. In certain French dioceses, the synodal statutes attest to an aggressive ecclesiastical campaign to have betrothals contracted publicly in church despite a strong custom of *créantailles*, private trothplight. In ex officio proceedings, initiated by the episcopal *promotor*,²²⁵ privately engaged couples were fined for their clandestine engagement and ordered to solemnize in church within a short time (e.g. a week). Even when one party denied the informal engagement, the other party claiming its existence had to pay the fine for clandestinity. In addition, any person assuming the role of a priest in conducting the engagement was also fined by the ecclesiastical court. In fact, the custom of ecclesiastical betrothals was first documented in the latter part of the thirteenth century in the vicinity of Paris, and was also customary in the fifteenth-century dioceses of Troyes and Brussels.²²⁶ In general, in fifteenth- and sixteenth-century France an engagement was perceived as an initiated marriage (*matrimonium inceptum*), which

²²⁴ E.g. Salonen, "When Matrimony Turned into a Funeral." See also Jochens, "The Church," 381.

²²⁵ The *promotor* was an official, usually acting as a prosecutor, of an ecclesiastical court protecting or promoting the common good, Donahue, *Law, Marriage, and Society*, e.g. 386, 408–417, 429–431, 437–444, 459–466, 469–470, 473–480, 578–587, 590–597; Pedersen, *Marriage Disputes*, 92; Donahue, "The Canon Law," 148; Vleeschouwers-Van Melkebeck, "Self-divorce," 97–98.

²²⁶ Hall, *The Arnolfini Betrothal*, 64; Gottlieb, "The Meaning of Clandestine Marriage," 58, 61, 63–67; Flandrin, *Sex in the Western World*, 50–53, 57–59. See also Lefebvre-Teilard, *Les officialités*, 110; Donahue, *Law, Marriage, and Society*, e.g. 346, 357. For English statutes, see Sheehan, *Marriage, Family and Law*, 142, 152.

contained an obligation to contract marriage within a maximum of forty days.²²⁷ Private engagements (*sponsalia de facto*) without priest or witnesses could be as mere concubinage or trial marriages, while ecclesiastical engagements (*sponsalia per manu sacerdotis*) were considered much more binding.²²⁸

Swedish ecclesiastical statutes forbade on pain of a three-mark fine betrothed men to have intercourse with their brides before the betrothal (*sponsalia*) had been published in church. Moreover, parish priests were frequently to remind their parishioners of this prohibition. This question also interested visitating late-fifteenth-century bishops.²²⁹ Unfortunately Swedish medieval ecclesiastical sources often disregard the secular wedding altogether, as their focus was rather first on future-tense consent and on the consummation of the union, significant from a canonical legal viewpoint. Thus the omission of the circumstances surrounding the consummation of unions, initiated by the betrothal, leaves us guessing whether the wedding had taken place before cohabitation and consummation or not.²³⁰ On the other hand, there are few medieval Swedish cases in which it was claimed that a present-tense contract existed without preceding engagement.²³¹

The Swedish 1480 ordinance for episcopal visitations insisted that the bishops were to take a firmer hold of the making of marriages during their visitations. The ordinance attacked clandestine marriages and strictly forbade people to contract marriage *per verba de praesenti* unless this took place at the church door. However, even secular betrothals were in the firing line. The ordinance attacked the making of clandestine *desponsaciones* in private drinking parties. All spousals, whether in present or future tense, were to be made in the presence of the priest using the proper words.²³² French manuals contained ecclesiastical

²²⁷ Molin – Mutembe, *Le rituel*, 49; Donahue, *Law, Marriage, and Society*, 472–

²²⁸ Dufresne, “Les comportements”, 134–136.

²²⁹ Synodal statutes of Linköping 1374–1391, SS, 64; Statuta Lincopensia (uncertain date and author), SS, 83; Statutes of the provincial council of Arboga 1412, SS, 107. See also *ibid.*, 113; Summary of statutes of the provincial council of Arboga 1412 for the diocese of Linköping, SKA, 31; Compendium statutorum provincialium Upsalensis, SS, 155; Summa canonum variorum conciliorum, SS, 183; Statute of Archbishop Jöns Håkansson for Hälsingland, 4.3.1425, SKA, 40; Statute of Archbishop Jöns Håkansson for Jämtland, 14.2.1425, SKA, 44; Ordinance for episcopal visitations 1480, diocese of Strängnäs, SKA, 96.

²³⁰ The formulas of the Formularia Lincopensia are examples of this.

²³¹ E.g. Korpiola, “The Two Husbands.”

²³² Ordinance for episcopal visitations 1480, diocese of Strängnäs, SKA, 95.

formulas both for spousals *de futuro* and *de praesenti*, while the Swedish had no separate formulas: part of the nuptial ritual could be used for the ecclesiastical betrothal.²³³ Therefore, in France the control of the local church even of these preliminaries of marriage was much more pronounced than in Sweden. In Sweden this would have been difficult to achieve, because betrothals were declared to be non-ecclesiastical in secular law. Moreover, in France the courts actively saw to it that the betrothed couples went on with the marriage by citing *ex officio* engaged couples to court in order to answer for their overlong betrothals. The couple could remain betrothed for up to a year although the synodal statutes insisted that the wedding was to follow the betrothal within forty days. The court could then order these tardy couples to solemnize within a certain period of time.²³⁴ Nevertheless, the French *ex officio* court cases against informally engaged couples and couples that postponed the solemnization have been taken to suggest ‘that the role of the church was less recognized in the early steps of marriage than in the later ones’.²³⁵

The Church’s sacred dogma of the indissolubility of marriage would have been gravely jeopardized if consummated betrothals could have been broken in the Church courts. This was also a perceived threat in many other countries, and they tried to eliminate the danger by forbidding intercourse before solemnization or attempting to restrict the betrothed couple from meeting each other between betrothal and wedding, especially spending the night together in the same house.²³⁶ The Church’s fear that people wishing to become engaged might, in their ignorance, exchange present-tense consent was also well founded. In some countries, notably Italy, this risk could be minimized by having either a notary or a priest attend the engagement and preside on the correct words of exchanged mutual consent.²³⁷ Although the French Church seems to have been relatively successful in controlling betrothals, in other countries the Church was less successful. The Polish Church had tried to insist that all engagements *de futuro* be conducted in the presence of a priest who witnessed the vows and reminded the couple

²³³ Knuutila, *Avioliitto*, 55–63, 280–289; Carlsson, *Jag giver dig min dotter*, II, 109.

²³⁴ Gottlieb, “The Meaning of Clandestine Marriage,” 63–64, 67.

²³⁵ Gottlieb, “The Meaning of Clandestine Marriage,” 67. See also Lefebvre-Teilard, *Les officialités*, 110.

²³⁶ Wendel, *Le mariage*, 30; Trexler, *Synodal Law*, 125.

²³⁷ Trexler, *Synodal Law*, 125.

to be chaste until ecclesiastical solemnization. Introduced in 1248, the statute was, nevertheless, repealed already in 1279.²³⁸ English synodal statutes regularly insisted on the presence of witnesses at a betrothal: where their number was specified, it ranged from three to five. In addition, they had to be formally invited, suitable or credible. Despite some thirteenth-century English statutes insisting that betrothals were to take place publicly in the presence of a priest, there is little to show that this norm was methodically enforced.²³⁹ Nevertheless, those contracting privately were considered to be ‘disturbers of the peace of the church’ and scornful of the Church’s laws.²⁴⁰ In Sweden where neither priests or notaries usually attended betrothals, control could be nearly impossible.

Charles Donahue Jr. has tentatively suggested that medieval Europe can be divided into two regions on the basis of the marriage disputes adjudicated in ecclesiastical courts: those in which the majority of unions were contracted in the present tense and those in which the dispute generally involved *de futuro* vows. He gives England as an example of the first region, while the latter practice would seem to be predominant in France. Many studies of the practice of English ecclesiastical courts support the prevalence of these unconditional present-tense vows.²⁴¹ Similarly, the mid-fourteenth-century records of the consistory court of Augsburg in southern Germany would suggest the prevalence of present-tense unions.²⁴² Another candidate for this medieval *de praesenti* group is Bohemia, where court records include no future-tense contracts. Rather, all the couples seem to have pledged their troth in the present tense, either in church or privately. According to recent research on Polish fifteenth-century ecclesiastical courts, this pattern also applied to Poland, where a considerable majority of all marital contract disputes

²³⁸ Brozyna, *Ecclesiastical Courts*.

²³⁹ Sheehan, *Marriage, Family and Law*, 137–138; Brundage, *Law, Sex, and Christian Society*, 436. See also Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 207–208.

²⁴⁰ Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 207–208.

²⁴¹ Donahue, “The Canon Law,” esp. 149–156; Donahue, *Law, Marriage, and Society*, 73–74, 215, 227–228. See also Donahue, “The Policy,” 263–269; Sheehan, *Marriage, Family and Law*, 55; Helmholz, *Marriage Litigation*, 31; McSheffrey, “I will never,” 157; Ingram, *Church Courts*, 195.

²⁴² *Ein Urtheilbuch der geistlichen Gerichts*, 7–15. See also Schwarz, *Die Bedeutung der Sippe*, 27.

involved *de praesenti* vows and the records contain very few future-tense cases.²⁴³

In the regions belonging to the second group marriage was usually initiated by future vows privately or during a more solemn act. The engagement was followed by intercourse or solemnization. Northern France might serve as a model here, possibly even Flanders. These vows were occasionally accompanied by the couple joining hands. Only seldom were rings, gifts, dowry or witnesses mentioned.²⁴⁴ Judging by the medieval evidence, Sweden would seem to be a region in which betrothal was in the fore. The laws strongly suggest this, and the few other pieces of evidence would seem to support the presumption. The prevalence of dissolutions of engagements of Bishop Hans Brask's register, discussed above, would point to this. Similarly, five of the eight formulas of the fourteenth-century formularies of the diocese of Linköping, explicitly mentioning how the marriage in question was contracted, refer to *sponsalia* or *desponsatio*, probably in the sense of betrothal or engagement, followed by consummation (and cohabitation).²⁴⁵

3.4 *The Growing Importance of Solemnization*

The Church's Insistence on Solemnization in Medieval Sweden

In the late thirteenth and early fourteenth century, when the Swedish provincial laws were written down, the secular ceremony had a rival or perhaps more accurately, an alternative. Solemnization *in facie ecclesiae* performed by a priest features in almost all of the provincial laws. But while secular marriage with betrothals and transfers were dealt with in the chapters on marriage or on inheritance, the procedures on solemnization performed by a priest and regulated by the Church were set forth in belonged to the chapter on the church. The Swedish word

²⁴³ Klassen, "Marriage and Family," 265; Brozyna, *Ecclesiastical Courts*.

²⁴⁴ Donahue, *Law, Marriage, and Society*, 310–312, 366–367, 376–379; Lévy, "L'officialité," 1268, 1274; Lefebvre-Teillard, *Les officialités*, 110; Donahue, "The Canon Law," 149–152; Gottlieb, "The Meaning of Clandestine Marriage," 70–71; Vleeschouwers-Van Melkebeek, "Self-divorce," 95. See, however, the caveat suggested by Donahue (*Law, Marriage, and Society*, 367, 376–377), namely, that the threat of excommunication and punishment of all participating in clandestine *de praesenti* marriages made it potentially 'dangerous to specify that the *sponsalia* were *de presenti*.' Therefore, the low number of clandestine present-tense marriages may be higher in reality.

²⁴⁵ *FL*, docs. I 4, 46–47, I 4, 47, II 17, 65, II 43, 73, II 44, 74.

vighia or *viga* meant to consecrate, dedicate to holy use, ordain or bless. Thus in a matrimonial context the word meant to bless a marriage.²⁴⁶ The verb *vighia* thus came to signify the ecclesiastical solemnization of a marriage.

According to the Swedish late-medieval manuals, the couple also exchanged present-tense consent in the church following the questions of the officiating cleric: '*Ego te N. exnunc recipio/accipio mihi in uxorem/maritum in nomine domini*'.²⁴⁷ Normally, the Swedish marrying couple did not exchange present-tense consent at all. Rather, the betrothal was followed by the rest of the marriage process and the union became a presumed marriage by consummation. Increasing solemnization thus also signified that marriage *per verba de praesenti* became more common. Moreover, when the couple exchanged their marriage vows at the solemnization, both the groom and the bride spoke the words publicly and deliberately. Even the bride was an active player and a legal subject, which was different from the traditional betrothal where she was passively given away and her acquiescence was interpreted as consent.²⁴⁸

The first steps in extending the role of ecclesiastical wedding ceremonies and making it a custom in Sweden were taken as early as in the twelfth century. Pope Alexander III wrote between 1165–1181 to the archbishop of Uppsala and his suffragans insisting that nobody was to marry clandestinely and without priestly benediction.²⁴⁹ Achieving results, however, required several centuries of repetition. In 1216, almost immediately after the Fourth Lateran Council had made the reading of the banns obligatory for all good Catholics, Pope Innocent III wrote to the Swedish archbishop and his suffragans. The pope was concerned over the Swedish non-observance of the canon law of marriage, mainly over the many instances of matrimony without the required ecclesiastical solemnities, sometimes even within the forbidden degrees. According to the pope, there were instances in which after long cohabitation, one spouse declared that there had been no marriage between the two. The incapacity of the other to prove the existence of the marriage bond often led to divorce, because the wedding had not been publicly celebrated at church. The pope exhorted

²⁴⁶ Söderwall, *Ordbok*, II.2, 965–966.

²⁴⁷ Knuutila, *Aviohutto*, 296–298.

²⁴⁸ See also Knuutila, *Aviohutto*, 311–316.

²⁴⁹ *DS I*, doc. 56, 85: '*Cæterum clandestina & absque sacerdotali benedictione non debere contrahere coniugia.*'

the bishops to prevent clandestine and incestuous unions on the pain of excommunication.²⁵⁰

Innocent III then dedicated much of the letter to repeating the norms on the ecclesiastical control of marriage issued by the recent Lateran Council. Marriage was to be preceded by the public reading of the banns by a priest. Moreover, an active role was required of the priests themselves in order to ascertain whether there were canonical impediments. If such were found to exist, the marriage was to be expressly forbidden until manifest documents had been obtained to indicate what was to be done in the matter. People marrying clandestinely or against an express prohibition had also their children declared illegitimate if an impediment was discovered between them although the parents would have been ignorant of it. The role of the clergy in preventing such illicit unions was emphasized by the threat of suspension: parish priests who failed to prevent such matches were to be suspended from office for three years. Even more severe punishments were possible if circumstances so demanded. The parties of a clandestine marriage faced penance, while people who maliciously tried to hinder a licit marriage by claiming the existence of an impediment were to be punished by ecclesiastical censure.²⁵¹

When the first provincial laws were being written down, secular marriage formation was dominant, which is why it was described in the chapters on marriage as the standard way of contracting matrimony. The chapter on the church of the law of Uppland prescribed in great detail the standard procedure for the ceremony *in facie ecclesiae*. A couple wishing to be married in church announced of their intention to their parish priest (*sockenprästen*). The priest was to announce at the door of the church on three Sundays that the betrothed couple wished to marry.²⁵² The law of West Gothia stipulated that any priest who solemnized a marriage without previously having had the banns publicized would be subject to pay a three-mark fine.²⁵³ In some places it was assumed that the betrothed couple would contact the *klockare*, the parish clerk or bell-ringer, who was to notify the priest that the couple

²⁵⁰ 5.4.1216, *DS I*, doc. 156, 182. See also Carlsson, *Jag giver dig min dotter*, II, 68–69.

²⁵¹ 5.4.1216, *DS I*, doc. 156, 182–183.

²⁵² UL, Kk 15:2, 25–26; VmL, Kk 20:1, 15; SdmL, Kk 13, 13; HL, Kk 15:1, 269; VgL II, Kk 69, 218. Cf. DL, Kk 7, 6. See also Synodal statutes of Bishop Brynolf I of Skara, 7.7.1280, *SKA*, 59.

²⁵³ VgL II, Kk 69, 218.

wished that their banns be read and that they wished to be blessed.²⁵⁴ Here, it should be observed that, in contrast to the Swedish betrothal, the bride was regarded as an active participant in the proceedings, as the couple was to ask for the banns together.

The purpose of the reading of the banns in church was to ensure maximum publicity to the couple's intention to marry. In medieval societies the church and churchyard were in many senses public places. The effectiveness of using the congregation and priest as a means of communication was also widely recognized by secular society. Swedish secular law acknowledged the effectiveness of the publicity gained when the parish had assembled to church on feast days.²⁵⁵

For the temporal society at large ecclesiastical marriage was optional, not compulsory, and solemnization *in facie ecclesiae* bestowed no special rights on the parties. Although in the eyes of the Church it created a valid marriage, certain secular ceremonies were also necessary in order for matrimonial property rights and the guardianship of the husband to come into force. The law of Uppland made the same point: it assumed that the couple was betrothed 'according to the law of the country' and that they wanted to be wed 'according to the law of the church'.²⁵⁶ Despite the scarcity of sources, one gets the impression that the secular wedding was the norm in Sweden, while those who wished could supplement it by the church ceremony. In practice, in Sweden clandestinity usually meant that the kinsmen and friends of both parties were present at a public feast, but the reading of the banns and presence of the priest were not always observed.

The ecclesiastical wedding ceremony found its way into almost all Swedish provincial laws, if not in any other way, at least through the mention of the fee for performing it. The fees demanded by the Church for solemnization, however, might have reduced its popularity. The chapters of the church of the provincial laws had established the fees that the priest could exact from the laity for various services, including solemnization. A 'candle fee' was charged as compensation for the wax candles burned in church during many ecclesiastical rites unless the persons brought their own candles. The priest and parish clerk (*klockare*) were to be paid for their services, and in addition a voluntary offering

²⁵⁴ Statute for the parish clerk (*custos ecclesiae*), *FMU IV*, doc. 3632. 439; Sandholm, *Klockarämbetet*, 206.

²⁵⁵ E.g. *MEL*, D II 6, 243.

²⁵⁶ *UL*, Kk 15:2, 25.

to the church was given.²⁵⁷ However, no priest was to demand money from the couple before solemnization on pain of excommunication.²⁵⁸ Olaus Magnus describes that tall candles were carried before the couple, who came to church to have their marriage blessed. These wax candles in different colours had been made with great skill and adorned with small pieces of colourful silk. After the ceremony the candles were left in the church alongside costly offerings, while the candle bearers fought in a frenzy for the patches of silk as if they were a rich booty.²⁵⁹

These fees varied from province to another depending on the local custom. According to the law of East Gothia, both the bride and groom had to make a gift, as much as they wished, to the Church. Still, the minimum required was two *örtug* for the candles and as an offering.²⁶⁰ The law of Dalarna required that the groom give three ells of 'good linen'.²⁶¹ According to the law of Uppland, the couple had to pay for the candles, one *örtug* per candle was the maximum (in Västmanland $\frac{1}{2}$ *öre*), and they were also to pay a sum at their own discretion as an offering.²⁶² Some laws showed consideration towards poorer people. If the couple provided their own candles, regardless of their quality, the priest had to marry them without delay, while they only had to pay an offering. Poorer people—non-landowning peasants, servants, day-labourers—could be married using the Church's candles, but they were still supposed to make some small offering. Even the chapter on the church of Småland, which otherwise does not refer to solemnization, mentions the fee for performance of the marriage.²⁶³

The ecclesiastical celebration clearly represents a later element in the provincial laws and because of this the law texts are not very coherent about the relationship between the wedding and the nuptial blessing in church.²⁶⁴ The law of Västmanland represents the main exception in the near-universal notion of the supplementary character of ecclesiastical

²⁵⁷ Sandholm, *Klockarämbetet*, 185–186. See also Statute for the parish clerk (*custos ecclesiae*), *FMU IV*, doc. 3632, 439–440; Knuutila, *Aviolüttö*, 400, 402.

²⁵⁸ Synodal statutes of Skara, probably from 1278–1317, *SKA*, 63.

²⁵⁹ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555]; I, 184.

²⁶⁰ ÖgL, Kk 31, 20. See also SdmL, Kk 13, 21; VgL II, Kk 53, 215. In 1320 a male labourer could expect 1 mark *penningar* (= 8 *öre* = 24 *örtug*) in addition to two pairs of shoes and one pair of gloves as his six-months wages, Lagerqvist – Nathorst-Böös, *Vad kostade det?*, 44. Cf. Statute of Bishop Sven of Skara to Dalsland 1437, *SKA*, 70.

²⁶¹ DL, Kk 3:5, 4; HL, Kk 9, 267.

²⁶² UL, Kk 9, 20; VmL, Kk 8, 9.

²⁶³ UL, Kk 9, 20; SmåL, Kk 7:1, 426. See also Gustavsson, *Kyrktagningsleden*, 136, 145.

²⁶⁴ Sjöholm, *Sveriges medeltidslagar*, 117. Cf. Sawyer, *Kvinnor och familj*, 44.

solemnization. While claiming that the marriage *in facie ecclesiae* was an alternative to the secular marriage process, it clearly betrays, at least on this point, a strong ecclesiastical bias. The law of Västmanland namely equates solemnization to a secular wedding as such: after the church wedding the spouses had obtained all their rights *as if* they had been put into bed together.²⁶⁵

While presupposing ecclesiastical solemnization, the law of East Gothia seems to have played a transitional role by combining the elements of the Swedish marriage process (betrothal, wedding and bedding) and the ecclesiastical ceremony. It assumed that wedding at church was standard procedure after the betrothal: 'After betrothal has taken place, they shall be blessed (*vigas*) by a priest'. Despite its promotion of the ecclesiastical marriage ceremony (at the expense of the secular wedding), the law required the secular bedding of the couple in order to create the legal consequences of the union.²⁶⁶ This corresponded with the ideology of the majority of the provincial laws: matrimonial property consequences were tied to the bedding rather than to the church ceremony. However, this assumption has not been tested, as no Swedish dispute has been found in which it was argued that ecclesiastical solemnization had taken place but had not been followed by the wedding and bedding.²⁶⁷

However, in the mid-fourteenth-century royal laws solemnization was mentioned as standard practice—or at least the ideal. After the woman had been lawfully betrothed, the priest was to read the banns and then he was allowed to perform the wedding.²⁶⁸ In Swedish law it was the priest of the bride's parish who was to read the banns, but according to English late medieval and early modern missals, for example, the banns were to be read both at the bride's and the groom's parish churches.²⁶⁹ The secular law spoke of reading the banns at the door of the church, while the ecclesiastical norms assumed that the banns were read from the pulpit, situated by the rood screen separating the choir from the rest of the church. However, it has been assumed that the latter was the ecclesiastic practice in medieval and early modern Sweden and

²⁶⁵ VmL, Ä 7:1, 46. Italics mine.

²⁶⁶ ÖgL, V 36, 91–92, G 6–7, 102–103.

²⁶⁷ Cf. Spierenburg, *The Broken Spell*, 231. See also Schwarz, *Die Bedeutung der Sippe*, 70–71.

²⁶⁸ MEL, G 2:3, 39; MESL, G 2:2, 38.

²⁶⁹ MEL, G 2:3, 39; KtL, G 2:3, 44; MESL, G 2:2, 38; SL 1387, G 2, 15. Knuutila, *Avioliitto*, 230.

that the banns were read after the sermon.²⁷⁰ A particular door of the church building was designated for the actual bridal ceremony. In some Swedish medieval manuals for the parish clerk (*klockare*) it was specified that one of his duties was to sweep the bride-doors before solemnization.²⁷¹ The wedding was obviously celebrated immediately after the church ceremony, and ecclesiastical sources disapproved of great wedding feasts that reduced many to poverty and caused many people to fear to receive the nuptial blessing.²⁷²

As elsewhere, the parish priest was to read the banns and bless the union. If the priest performed the ceremony at an irregular hour or if the cleric was not the parish priest, the matrimony was valid, but clandestine in the eyes of the Church, because there was some irregularity in observing the proper procedure as stated in canon law. In later medieval Europe various orders attempted increasingly to usurp the offices of the regular parish clergy. Such controversies about monks administering sacraments contrary to canon law flared up also in medieval Sweden.²⁷³ A monk who administered the eucharist or extreme unction or celebrated marriage without the proper special licence from the parish priest, was excommunicated *ipso facto* and could only be absolved by the pope. It is known that one Finnish monk had married several couples without due authorization by the proper parish priest and consequently sought an absolution and a dispensation from the papal Penitentiary.²⁷⁴ Such monks could be perceived as threats to the supervision of impediments and to the insistence on marriage *in facie ecclesiae*, for it combined the apparent veil of legitimacy of the performing cleric with a lack of true control, as the banns had apparently not been read. Consequently, the clerics of the diocese of Linköping were exhorted to not to permit monks (*Fratres*) to solemnize marriages without the proper banns. In such cases, the monks were to be denounced to the bishop.²⁷⁵

²⁷⁰ UL, Kk 15:2, 25–26; Knuutila, *Aviolütto*, 243–246.

²⁷¹ Statute for the parish clerk (*custos ecclesiae*), *FMU IV*, doc. 3632, 439; Åbo klockarelag, printed in Sandholm, *Klockarämbetet*, 206; see also *ibid.*, 97, 127.

²⁷² *De septem sacramentis*, cap. VII, 209.

²⁷³ E.g. 28.5.1340, *REA*, doc. 98, 59–60. See also Summary of statutes of the provincial council of Arboga, *SKA*, 27.

²⁷⁴ Regulations concerning penance, diocese of Skara, *Beiträge zur Geschichte des Buss- und Beichtwesens*, xv; Salonen, *The Penitentiary*, 330. See also 8.8.1403, *SD I*, doc. 372, 282–283; Carlsson, *Jag giver dig min dotter*, II, 194.

²⁷⁵ Statuta Lincopensia, SS, 77.

The Swedish synodal statutes followed the general policy of the Church in forbidding clerics to participate in clandestine marriages. Consequently, in Sweden the statutes of the provincial synod of Tälje of 1368 first pursued the matter of clerical participation in clandestine unions on a national level. No priests were allowed to be present at secret betrothals (*clandestinis desponsationibus*) or to bless them in church if the banns had not been read thrice. Clerics disregarding the statute were to be suspended of their office and benefice.²⁷⁶ Probably after this, however, a distinction was made between clandestine betrothals and marriage. (This may again be a misunderstanding based on the confusion due to the ambiguity of the sense of the word *desponsatio*.) At least the later Swedish statutes followed the general policy of the Church in forbidding priests to celebrate weddings (*nuptias*) without preceding banns or clerics to participate (*non intersint*) in clandestine marriages on pain of a three-year suspension. Matrimony was considered clandestine if witnesses did not attend it, it was not solemn or banns did not precede it.²⁷⁷

As discussed above, in many European regions priests officiating wedding ceremony without observing the formalities of the Fourth Lateran Council were actually suspended for three years. In addition, diocesan legislation insisted that all the participants (principals and witnesses) of clandestine marriages were automatically *ipso facto* excommunicated, including the officiating priest. Such strict punishments for participating clergy may have been out of place in a country like Sweden, which had relatively few priests in the thirteenth century. The statutes of the Council of Skänninge of 1248 concerning clerical celibacy and the threat of suspension of persistently concubinous priests had to be cancelled for acute want of celibate clergy.²⁷⁸ The strict implementation of the norms concerning clandestine marriage might have resulted in a similar situation. In addition, no medieval documents prove positively that Swedish parish priests were suspended for merely attending the clandestine marriages of their own parishioners. The Swedish Church insisted that bigamy, clandestine marriage in the present tense and

²⁷⁶ Statutes of Tälje (1368?), SS, 56. In Iceland such statutes appear in 1269, Jochens, "The Church," 381.

²⁷⁷ Statuta lincopensia, SS, 77; Summa canonum variorum conciliorum, SS, 192. Cf. Knuutila, *Aviolütto*, 62.

²⁷⁸ Ljungfors, "Mötet i Skänninge," 31. For similar problems in Norway, see Holtan, *Ekteskap*, esp. 69–123.

subsequent solemnization with another person, were serious sins only absolvable by the bishop. In the classification of sins, secret marriage or matrimony against ecclesiastical interdict belonged to the sins for which in some dioceses only the bishop could grant absolution.²⁷⁹

If someone protested between the banns and the wedding and claimed knowledge of an impediment or a reason why the couple could not to be joined and live together, the priest was forbidden to marry them before the matter had been resolved.²⁸⁰ Canon law insisted that people had to make a timely protest when the banns were published, in order to give evidence of the existence of the impediment, unless they had a legitimate reason for the untimeliness.²⁸¹ Swedish law contained similar provisions. A person who knew of such an impediment and of the reading of the banns, but did not speak up, supposedly forfeited his right to plead the impediment later on.²⁸² This prohibition, however, has been characterized as one of the most laxly enforced canon law rules. Almost any excuse was interpreted as a legitimate reason and the later witness statement about the impediment accepted: even if the person had thought at the time that objection was useless or had not been absolutely sure about the impediment, he was allowed to testify.²⁸³ In addition, Swedish law decreed that anyone who made an unfounded claim of an impediment and thereby maliciously tried to defer or dissolve the marriage after the reading of the banns or the wedding *in facie ecclesiae*, was to pay a six-mark fine. One third each went to the king, the bishop and the injured party.²⁸⁴ This was probably intended to discourage later claims that the union was invalid, for example in relation to a claim that the children were illegitimate, intending to bastardize them, or to petition of annulment.

It is possible that the Swedish Church was nudging couples to the altar also by other methods than the threat of excommunication. The register of Hans Brask contains also occasional mentions of couples

²⁷⁹ *Casus episcopales*, SS, 82; Regulations concerning penance, diocese of Skara, *Beiträge zur Geschichte des Buss- und Beichtwesens*, xvii. Cf. synodal statutes of the diocese of Turku, *FMU V*, doc. 4415, 344.

²⁸⁰ UL, Kk 15:2, 25–26; HL, Kk 15:1, 269. *KrL*, G 2:3, 44. The law of Södermanland was less specific, *SdmL*, Kk 13, 21. See also *Statuta Lincopensia*, SS, 77.

²⁸¹ X 4.18.6.

²⁸² UL, Kk 15:2, 25–26.

²⁸³ Helmholz, *Marriage Litigation*, 108.

²⁸⁴ UL, Kk 15, 25–26; HL, Kk 15:1, 269; *VmL*, Kk 20:1, 15 (fine three marks). Cf. Trexler, *Synodal Law*, 271.

pledging to solemnize their marriage before a certain date. For example, Birger of Varby and Birgitta Månsdotter promised to solemnize (*viias*) before the feast of St. Michael on pain of two oxen and both provided two sureties for this. Apparently, the same idea was behind the sureties of the girl (*Iuencula*) Margareta Mattsdotter for her marrying (*prosequatur in incepto matrimonio cum*) Peder Johansson. The fine for non-compliance, six oxen, was very high.²⁸⁵ Such methods may have been used for the more recalcitrant couples who possibly had already consummated their union, but tried to dodge the solemnization, especially as discussed above, the practice of dissolving engagements was quite liberal in late medieval Sweden. At least the post-Reformation practice indicates the use of conditional fines and sureties for pressurizing such couples to finalize their marriage *in facie ecclesiae*.

The Role of the Banns in the Fight against Incest and Bigamy

The reading of the banns in Sweden was intended to prevent two evils: the existence of an impediment of consanguinity, affinity or spiritual affinity, or of the impediment of *ligamen*, a prior contract or a previous marriage.²⁸⁶ The Church did not wish to cover an adulterous or bigamous union with the veil of the holy sacrament of matrimony, which occasionally occurred despite the secular law prescribing capital penalty to bigamists who had consummated the second union.²⁸⁷

In the Penitentiary material, three of every four Swedish couples marrying despite an impediment claimed ignorance of its existence. Although marriage in defiance of canon law was considered a greater sin than ignorance of the impediment, which might have given people an incentive to feign innocence, the admissions of the parties were accepted as the truth. Namely, tampering with the truth would have invalidated the dispensation. This may well have been true in many cases, as in the vast majority of cases the affinity or/and consanguinity was either in the fourth or the third and fourth degrees.²⁸⁸ As the kinship or affinity was rather distant, a plea of ignorance might have

²⁸⁵ 23.7.1525, 367, *BHBR*, 413; 27.11.1525, 385, *BHBR*, 430. See also 19.4.1525?, 336, *ibid.*, 388.

²⁸⁶ UL, Kk 15:2, 25.

²⁸⁷ *MEL*, H 4, 214; *MESL*, H 3, 232–233; *SL 1387*, H 3, 98; *KrL*, H 5, 132–133. For cases of bigamy, see e.g. 17.6.1476, *SST I*, 60; 18.2.1505, *SST IV*, 103; Suvanto, *Yksilö*, 421.

²⁸⁸ Salonen, *The Penitentiary*, 268, 270–271.

been genuine. One could also argue for the opposite view. At least some late-fifteenth and early-sixteenth century noble families kept records of their family connections for inheritance reasons and the pursuit of a successful land policy.²⁸⁹ The parties may not have cared to delve too closely into possible common ancestry until the fifth degree, as meticulous scrutiny might have uncovered impediments. In absence of such an inspection of the respective family trees, ignorance would be genuine and the dispensation valid.

It had rightly been assessed that '[t]he interests of wives and children and the peace of society required that such cases should be treated tenderly'.²⁹⁰ The systematic breaking of all incestuous marriages contracted despite impediments would have caused scandals and 'made a farce of the indissolubility of marriage'. Moreover, this would have serious consequences for the status of children, who risked bastardization and disinheritance although the marriage of the parents might have been considered putative.²⁹¹ Certain mentions in Bishop Hans Brask's genealogy referring to marriages within the third degree might support this view although it is not known whether dispensations were issued for these couples.²⁹² In late medieval penitential literature the ignorance of an existing prohibited degree was portrayed as a salutary slumber, potentially dangerous to disturb. The influential *Summa Angelica* recommended that if a confessor unearthed a hidden impediment, he should conceal it from the parties unless he was convinced that it was to their benefit. Moreover, the canonical maxim was that the Church could not judge in hidden cases.²⁹³

While distant kinship, affinity and spiritual kinship were difficult to keep track of at best, tracing illicit affairs resulting in affinity was simply impossible. Nevertheless, if rumours began to spread and public scandal arose, Swedish clerics did not hesitate to act decisively. In one case Yvarus Asmindi of the diocese of Uppsala had had sexual relations with a woman whose kinswoman in the third degree, Catharina Magni Olavi, he later married. The couple claimed ignorance of the impediment at their marriage, but their intended solemnization was prevented

²⁸⁹ Hættner Aurelius, *Inför lagen*, 80–81.

²⁹⁰ Lea, *A History of Auricular Confession* II, 380.

²⁹¹ Bruguière, "Canon law," 493.

²⁹² *Biskop Hans Brasks släktbok*, 45.

²⁹³ Lea, *A History of Auricular Confession* II, 380; Friedberg, *Das Recht der Eheschliessung*, 72–73.

by the officials of the archbishop of Uppsala, who had learned of the impediment. As a consequence the couple was also excommunicated, possibly for disobeying the archiepiscopal order to separate, and the couple then had to turn to Rome for dispensation and absolution. In a similar case, the husband had previously carnally known his future wife's kinswoman in the fourth degree, but in this instance the couple had married knowing of the impediment. Subsequently the excommunicated couple had to apply for dispensation and absolution.²⁹⁴

The Church's preoccupation with the banns, partly founded on its profound abhorrence of incest, was met with some laxity in people's attitudes towards the impediments of consanguinity and affinity. In the fifteenth-century Low Countries, people contracting marriage were prepared to marry first and explain, if necessary, their action later in spite of an existing or rumoured impediment. However, some in the community wished to observe the incest rules, as the rumours and *fama volans* enabled the ecclesiastical prosecutor to initiate proceedings. The ecclesiastical judges were sceptical about the professed ignorance of the parties of the existence of an impediment and in many cases called the parties' ignorance outright feigned (*ignorantie affectatores*).²⁹⁵ The Florentine church attributed its parishioners with similar ignorance of the canonical impediments of consanguinity, affinity, spiritual affinity, public honesty and adoption, and insisted that the parish priest recite them one by one every time he read the banns.²⁹⁶

A fear of incest contributed to the insistence of monitoring the marriage process, but also the freedom of choice could be guaranteed better under the vigilant eye of the priest performing the ceremony. In Sweden, as elsewhere, ecclesiastical manuals retained the giving away of the bride by her father or kin as part of the ritual despite the stress on individual consent. The giving away of the bride was to take place after the couple, their relatives and friends had arrived at the church door and bride had taken her place at the left side of the groom.²⁹⁷ This was a way of combining the ecclesiastical ceremony with the secular

²⁹⁴ Salonen, *The Penitentiary*, 273.

²⁹⁵ Vleeschouwers-Van Melkebeek, "Incestuous Marriages," 83, 93; Helmholz, *Marriage Litigation*, 79–81. See also discussion in Donahue, *Law, Marriage, and Society*, 577–597.

²⁹⁶ Trexler, *Synodal Law*, 126.

²⁹⁷ Carlsson, *Jag giver dig min dotter*, II, 27–28.

procedure, which insisted that the giving away of the bride had to be performed at the wedding by her legal guardian.

A further means of persuading the couple to have their marriage solemnized was the canonical rule that children, whose parents' marriage was later annulled because of an impediment, would be declared illegitimate if the marriage had not been contracted *in facie ecclesiae* and the banns read in due course.²⁹⁸ This prevented couples from skipping the banns and feigning ignorance of the impediment when it was discovered. In Norway King Erik's statute from 1280 repeated this: only when the union had been preceded by the reading of the banns could the children be considered legitimate if the marriage was later discovered to be null and void.²⁹⁹ Such provisions were also included in late-medieval Swedish synodal statutes, and priests were frequently to make this principle known to their parishioners.³⁰⁰ However, while thirteenth-century Icelandic and Norwegian ecclesiastical statutes made the publishing of the banns a precondition of valid betrothals, Swedish law presupposed that the betrothal preceded the reading of the banns.³⁰¹

Many Swedish provincial statutes clerics admonished clerics to ensure that foreigners or strangers were not to be allowed to marry unless they presented reliable proof either by documents or witnesses of their single status. If priests married such people without the required evidence, they were punished with a three-mark fine. This was first mentioned in the 1412 provincial statutes of Arboga.³⁰² This would point out that bigamy, rather than incest, was seen by the clerics, if not as the bigger evil then at least as the more probable scenario. Moreover, certain statutes insisted that priests had to denounce such couples to the rural

²⁹⁸ See above Chapter 2.3.

²⁹⁹ Lehmann, *Verlobung*, 91. See also Holtan, *Ekteskap*, 14–15.

³⁰⁰ Synodal statutes of Linköping 1374–1391, *SS*, 64; Statuta Lincopensia (uncertain date and author), *SS*, 83; Statute of Archbishop Jöns Håkansson for Hälsingland, 4.3.1425, *SKA*, 40; Statute of Archbishop Jöns Håkansson for Jämtland, 14.2.1425, *SKA*, 44.

³⁰¹ Jochens, *Women*, 46.

³⁰² Statutes of the provincial council of Arboga 1412, *SS*, 107; see also *ibid.*, 113; Summary of statutes of the provincial council of Arboga 1412 for the diocese of Linköping, *SKA*, 31; Compendium statutorum provincialium Upsalensis, *SS*, 155; Summa canonum variorum conciliorum, *SS*, 182; Statute of Archbishop Jöns Håkansson for Hälsingland, 4.3.1425, *SKA*, 40; Statute of Archbishop Jöns Håkansson for Jämtland, 14.2.1425, *SKA*, 44.

dean within ten days or pay a six-mark fine.³⁰³ The Church taught its clerics also to be sceptical towards unknown couples wanting to pass as married. Such suspect couples were to be denied communion at Easter if they could not present proof or letters that they had been lawfully joined. They were to be allowed to partake of the eucharist only if death was imminent, and priests disregarding these means of control were to be fined three marks. The statutes also pointed out that caution was in order, as ‘many come a-running with their kinswomen and wives of others’.³⁰⁴ If the priest had qualms about the legitimacy of the union, he was not to bless the nuptial couple without consulting the bishop, to whom all cases of doubtful marriage were to be referred.³⁰⁵

Moreover, many Swedish synodal statutes focus on the fact that although second marriages were celebrated *in facie ecclesiae*, in such cases certain part of the ritual containing the nuptial blessing had to be omitted. None of the secular Swedish medieval laws mention the forbidden periods of celebrating marriage: obviously this was considered an internal affair of the Church. In contrast, some Norwegian provincial laws contain minute restrictions on permitted marriage periods, but these were directed at the laity: a person marrying on a forbidden day was to pay the bishop a three-mark fine.³⁰⁶ Later the practice of the province was unified by permitting the rebenediction of already blessed men who married virgins or ‘corrupted’ but yet unblessed women.³⁰⁷ Priests were also reminded of the forbidden times³⁰⁸ when no weddings were to be solemnized, celebrated or blessed on pain of dismissal. The prohibition was absolute and no bishop could dispense from it. Later statutes suggested that the guilty priest be punished

³⁰³ Statutes of 1417, *SS*, 116.

³⁰⁴ E.g. Statutes of the provincial council of Arboga 1417, 14.9.1417, *SD III*, doc. 2408, 274; *Summa canonum variorum conciliorum*, *SS*, 192; Statute of Archbishop Jöns Håkansson for Hälsingland, 4.3.1425, *SKA*, 40; the statute of Archbishop Jöns Håkansson for Jämtland, 14.2.1425, *ibid.*, 44.

³⁰⁵ Synodal statutes of Skara, probably from 1278–1317, *SKA*, 63. See also 78, Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 206.

³⁰⁶ Holtan, *Ekteskap*, 16–17.

³⁰⁷ Statute of Tälje (1368?), *SS*, 56; Statutes of the provincial council of Söderköping 1441, *SS*, 126; *Compendium statutorum provincialium Upsalensis*, *SS*, 161; *Summa canonum variorum conciliorum*, *SS*, 186–187.

³⁰⁸ According to canon law, the forbidden time was considered to extend from Advent Sunday to the eight day (octave) after Epiphany, from Septuagesima Sunday to the Octave of Easter and from the Sunday before Ascension Sunday to the Octave of Pentecost, *De septem sacramentis*, cap. VII, 204; Knuutila, *Avioliitto*, 215–217. See also Thomas, *Religion*, 740–741.

arbitrarily.³⁰⁹ Moreover, if two or many feasts followed each other, solemnization was not permitted on the first feast, as the couple could not be trusted not to immediately enter the wedding bed (*intrando lecto*) despite contrary promises. Disobedience was punished with a three-mark fine. A wedding on the last feast could be permitted, though. In 1474 it was conceded that the official could exceptionally grant nobles the permission to solemnize even on the first feast day, but in such cases they had to give their guarantee that bedding would not take place.³¹⁰ Solemnization was also forbidden if the girl was not yet twelve or the boy fourteen years old.³¹¹

In Sweden the Church, discontent with the optional character of the ceremony, was striving for the solemnization of each and every wedding. Consequently, it tried to impose the ecclesiastical benediction ceremony on all couples intending to marry. The Swedish provincial and synodal statutes, rather than the secular legislation, testify to this campaign. First, some statutes threatened all those who celebrated or participated in clandestine marriages were threatened with excommunication.³¹² The laity was to be admonished wisely and assiduously not to presume to perform the wedding before the union had been blessed *in facie ecclesie*.³¹³ Some occasional statutes went as far as to threaten couples that refused the ecclesiastical ceremony with minor excommunication. If only one party refused, he was put under the minor ban, while the obedient spouse could partake of the Holy Communion.³¹⁴ Because of a lack of sources, the effects of such extreme statutes cannot be evaluated, and judging by the number of mentions of the insistence on marriage *in facie ecclesiae* in Swedish synodal statutes, it must have been uphill work.

We know of some cases in medieval Sweden when the priest refused to perform the requested nuptial blessing because there was reason to

³⁰⁹ Statutes of the provincial council of Arboga 1396, SS, 98; Summary of statutes of the provincial council of Arboga 1396 for the diocese of Skara, *SKA*, 27; Statutes of the provincial council of Arboga 1412, SS, 107; see also *ibid.*, 113; Statutes of the provincial council of Söderköping 1441, SS, 125–126; Compendium statutorum provincialium Upsalensis, SS, 137.

³¹⁰ Statutes of the provincial council of Söderköping 1441, SS, 125–126; Compendium statutorum provincialium Upsalensis, SS, 161; Summa canonum variorum conciliorum, SS, 186; Statutes of the provincial council of Arboga 1474, SS, 178–179.

³¹¹ Synodal statutes of Linköping 1374–1391, SS, 64.

³¹² Statuta Lincopensia, SS, 77.

³¹³ Synodal statutes of Bishop Brynolf I of Skara 7.7.1280, *SKA*, 59.

³¹⁴ Synodal statutes of Skara, probably from 1278–1317, *SKA*, 65.

believe that an impediment existed between the parties. In one case from the 1410s the question of impediments to existing marriage was being appealed to Rome. This was the *cause célèbre* of Helleka, widow of Hans Horn, and her two husbands. The vice rector of the local parish of Stockholm had been told by the mayor, Johannes Westfal, that Helleka was coming to the church wanting to get married there, as was the custom, to Gotskalk Severinghuse and be blessed with all the solemnities. However, the anonymous vice rector replied that by law he could not do that, because the banns had only been read once instead of the prescribed three times, and then Lubbert Kortenhorst had reacted claiming a prior contract. Kortenhorst also argued that he had appealed to Rome and that the matter was pending in the papal Curia. The priest, unimpressed by the threats of the mayor that the archbishop would punish him gravely, adamantly refused to bless the notorious couple.³¹⁵

Another weak link in the universal system of control of the parish priest, created in 1215, was the ignorance of the clergy. In a case concerning spiritual impediment and affinity from ca. 1369, two priests, Unno of Berga and Atto of Värnamo had refused to marry, bless or even participate in the wedding of the widow Katarina Västensdotter and Birger Trolle because of the impediments between them.³¹⁶ However, while there were some scrupulous clerics who adhered strictly to canonical norms, others apparently chose to disregard them. The Swedish late-fifteenth century Church sought to remedy this by emphasizing the role of episcopal control during visitations. The bishops were to inquire diligently into matrimonial matters, as prohibited unions were often solemnized because of the ignorance of the priests.³¹⁷

In one case from the 1410s, clerics in Archbishop Johannes Gerechini's entourage (his secretary and one of his chaplains) did not hesitate to marry dubious couples, evidently without due preceding investigation of such possible impediments as precontract and affinity. In the case of Jeppe Nilsson from the diocese of Roskilde and Margareta, daughter of Jacob Pål of Stockholm, there were two impediments to their marriage: Margareta had already contracted marriage to another man, although the archbishop had falsely, as it was later asserted, annulled

³¹⁵ 9.7.1419, *SD III*, doc. 2661, 475. For a more thorough discussion of the case, see Korpiola, "The Two Husbands."

³¹⁶ 8.8.1403, *SD I*, doc. 372, 282–283.

³¹⁷ Ordinance for episcopal visitations 1480, diocese of Strängnäs, *SKA*, 95.

the union. Possibly, at the time of the marriage, Margareta was already the concubine of Archbishop Johannes Gerechini himself, and because Jeppe was his kinsman in the third degree, an impediment of affinity existed between Margareta and Jeppe. Moreover, they meant only to simulate marriage through mental reservations and nonconsummation, so that the archbishop might continue (or initiate) his affair with her. This also meant that the two children later sired by the archbishop were conveniently attributed to Jeppe as Margareta's husband.³¹⁸ Even in this flagrant case no mentions of the officiating priest's possible punishments or suspension can be found in the sources, although canon law and the local ecclesiastical statutes presupposed them. In the case of Birger Trolle and Katarina Västensdotter, the noble couple had found a Dominican friar (*frater quidam de ordine predicatorum*) who blessed them *in facie ecclesiae* without reading the banns.³¹⁹

In addition, even bishops could be less than assiduous in insisting that people adhere to the Church's norms. The above-mentioned marriage of Birger Trolle with the older widow Katarina Västensdotter was dissolved around 1369 after the 'discovery' that he was related in the fourth degree to three of her previous husbands. Moreover, she was his godmother. After the dissolution, Trolle requested Bishop Nicolaus Marci's permission to remarry secretly (*ut ad secreta vota conuolare posset*). The bishop granted him this request while Katarina was denied the right to remarry.³²⁰ The permission to marry clandestinely puts Bishop Nicolaus of Linköping into a strange light, considering the Church's campaign to increase the popularity of public solemnization. The reasons for this request and its granting are not known. The secrecy of Birger Trolle's second marriage may have later caused doubts about the legitimacy of his children.³²¹ In recent research on the fifteenth-century archdiocese of Gniezno, it has been suggested that the publication of banns was rare in late-medieval Poland.³²² Similar conclusions cannot necessarily be drawn regarding contemporary Sweden where there are examples of the publication of the banns unearthing impediments and

³¹⁸ 3.7.1419, *SD III*, doc. 2794, 586–587. See also 9.7.1419, *SD III*, doc. 2661, 476. On mental reservations and their legal role, see also Pedersen, "Did the Medieval Laity Know," 130; Pedersen, *Marriage Disputes*, 112–113.

³¹⁹ 8.8.1403, *SD I*, doc. 372, 283; Carlsson, *Jag giver dig min dotter*, II, 194.

³²⁰ 8.8.1403, *SD I*, doc. 372, 282–283; Carlsson, *Jag giver dig min dotter*, II, 194–197.

³²¹ 20.9.1403, *SD I*, doc. 384, 293.

³²² Brozyna, *Ecclesiastical Courts*.

preventing solemnization. But again the scarcity of ecclesiastical records prevents any inference based on a quantitative analysis.

Even if presumed marriage (*matrimonium praesumptum*) was considered a valid way of contracting marriage, it was punishable and illegal because of the Church's insistence on the banns and ecclesiastical solemnities. It has been observed that the more distinctly trothplight and solemnization were apart, the greater was the problem posed to ecclesiastical marriage ethics by the interval. As long as these two coincided to some extent temporally, the Church's vagueness regarding the concrete legal acts creating a valid marriage with the right to sexual cohabitation did not have much practical consequence. However, when the interval was longer, the problem was intensified.³²³

If the Church considered this to be a valid way of contracting marriage and indeed, it was often mentioned in ecclesiastical court records, why, then, were people fined for it? In France, for example, couples who consummated their marriage before the solemnization of the Church, 'out of the sight of the church (*extra faciem ecclesiae*)', were fined and ordered to solemnize in church.³²⁴ The first reason is more general and goes back to the Church's general dislike of sexuality: sex was permissible only in wedlock and even then canonists and theologians disputed whether it could ever be quite sinless. Secondly, the reading of the banns intended to ensure that no impediments to the union existed. If the couple had sex before this could be done, they might be unknowingly committing adultery or even incest. It is not known whether couples who had contracted *de futuro* and consummated their marriage were ordered by ecclesiastical judges to solemnize in medieval Sweden. In contrast, in regions such as France, where ecclesiastical solemnization was the norm, such couples were ordered to solemnize.³²⁵

Thirdly, intercourse between fiancés threatened to disrupt the Church's dogma of the indissolubility of marriage. If the post-engagement sexual relations were unknown, the betrothal could be broken by an unsuspecting bishop, although by the intercourse the union had actually become an indissoluble marriage. The longer the engagement had lasted, the more strongly it could be presumed that the couple had anticipated the wedding and had enjoyed the joys of matrimony in

³²³ Hellsten, *Kyrklig och radikal*, 82.

³²⁴ Gottlieb, "The Meaning of Clandestine Marriage," 58–59, 65.

³²⁵ Dufresne, "Les comportements", 134; Flandrin, *Sex in the Western World*, 50–51.

advance. The concern was acute when the bishop was asked to dissolve an engagement: how could he know whether the fiancés had consummated the union thereby contracting an indissoluble marriage. After his betrothal to Katarina, daughter of Karl *pictor* of Söderköping, Björn the Dane had disappeared for seven years and apparently left the Swedish realm. Katarina was allowed to marry another provided that they had not consummated the initiated marriage (*inceptum matrimonium*).³²⁶ Thirdly, the reading of the banns was also intended to ensure that no impediments to the union existed. So, in short, prenuptial fornication was punishable because of the Church's campaign to enhance the position of the ecclesiastical wedding ceremony.³²⁷

Certain Swedish provincial laws forbade sexual relations between betrothed couples at the pain of a fine.³²⁸ This was probably due to ecclesiastical influence, because, generally speaking, secular law did not object to sexual relations between the betrothed couple, whose children had full inheritance rights. The statutes of provincial synods came to extend the prohibition and ensuing punishment to the whole archdiocese of Uppsala. A bridegroom was fined three marks for having intercourse with his bride before the banns and ecclesiastical benediction.³²⁹ The provincial statutes of 1425 gave as the rationale of the sanction that should an impediment arise between the couple, resulting in the breaking of the marriage, the children were to be considered illegitimate if the banns had not been read or the marriage had not been performed in church.³³⁰ Although such norms were not included in King Magnus Eriksson's Law of the Realm, the section emerged in secular law in 1442: if the groom had had prenuptial sexual relations with his bride, he was to pay the bishop a three-mark fine.³³¹ This has rightly been understood as a direct result of ecclesiastical influence.³³²

³²⁶ 238, 1524 Judicium synodale, *BHBR*, 307–308.

³²⁷ See also Thomson, *Hävdande*, 9. For punishments for prenuptial fornication or cohabitation *anlequam uxoretur* in medieval France, see Dufresne, "Les comportements", 134–135; Gottlieb, "The Meaning of Clandestine Marriage," 65.

³²⁸ VgL I, G 6–6:1, 98; VgL II, G 8, 284, Add. 12:2, 392.

³²⁹ E.g. *SD II*, doc. 1616, 5, 542; the decision of the provincial synod in Arboga from 1412, issued for the diocese of Linköping, 23, *SKA*, 31.

³³⁰ E.g. the statute of Archbishop Jöns Håkansson for the church in Hälsingland, 4.3.1425, *SKA*, 40; the statute of Archbishop Jöns Håkansson for the church in Jämtland, 14.2.1425, *ibid.*, 44.

³³¹ *KrL*, G 2:3, 44.

³³² Thomson, *Otidigt sängelag*, 4.

Enforcing the norm was naturally the problem. One might suppose that obvious cases of prenuptial fornication were discovered if the bride was visibly pregnant or had given birth to a child before solemnization. The episcopal visitations were supposed to control this aspect as well: during their visitations bishops were also to inquire whether betrothed couples had slept together before the banns had been read.³³³ It is not known to what extent couples were fined for prenuptial fornication, but this norm probably slowly began to influence people's attitudes regarding the desirability of commencing sexual relations only after solemnization.

The Position of the Nobility and the Towns in Adopting Ecclesiastical Solemnization

As relatively few medieval sources have survived, it is impossible to estimate to what extent medieval Swedes were married in church and whether this frequency varied according to socio-economical or geographical factors. Some mentions of ecclesiastical wedding ceremonies, however, may allow tentative observations regarding the Church's success. The trend is unmistakable and probably universal: ecclesiastical solemnization was becoming increasingly popular because of the Church's efforts. What is more, marriage *in facie ecclesiae* was spreading downward from the top of the society.

In Sweden royalty and aristocrats were the first to have their marriages regularly solemnized. As to royalty, this was often necessary because of the international marriage alliances involved. It was natural to have the marriage performed by the supranational rituals of the Catholic Church, especially as the presence of high-ranking clerics gave the ceremony added solemnity and bindingness. Moreover, the fact that a cleric presided over the ceremony was a legitimating factor. The nobility certainly had motives to comply with ecclesiastical norms in order to guarantee the legitimacy of issue and property transfers.³³⁴ This is also reflected in the fact that the Swedish nobility was active in seeking papal dispensations from various impediments, mainly consanguinity

³³³ Ordinance for episcopal visitations 1480, *SKA*, 96.

³³⁴ See Ribordy, *Faire les noces*, 51, 86 for France. In Orthodox Russia, nobles were also the first regularly insisting on ecclesiastical solemnization, Levin, *Sex and Society*, 84.

and affinity, especially in the fourteenth and fifteenth centuries.³³⁵ There is no evidence, however, that the Swedish nobility would have followed the practice of Continental and English nobility of omitting the publicizing of the banns and marrying in their homes, although this would have been performed by a cleric (on the custom, see above Chapter 2.3). Judging by dispensation letters and other documents, it would also seem that nobility sought to marry *per verba de praesenti*, possibly also *in facie ecclesiae* (albeit this is not regularly mentioned), although a future-tense betrothal surely often preceded the marriage.³³⁶ By contrast, only three of the eight formulas of the fourteenth-century formularies of the diocese of Linköping that explicitly mention how the marriage was contracted refer to ecclesiastical solemnization and banns.³³⁷

Many illicit or otherwise dubious unions wished to convey the impression of sanctity and propriety by the ecclesiastical marriage rites and to receive the presumption of legitimacy offered by the nuptial benediction.³³⁸ This was also the case in medieval Sweden. As mentioned in the previous chapter, the widow Helleka Horn and her second suitor tried to legitimize their relationship by solemnization in their parish church in Stockholm, despite an infamous dispute over her previous marriage to Lubbert Kortenhorst was then being appealed to the Curia. At a later stage the couple managed to have their union solemnized by one of the archbishop's chaplains, in overt defiance of the papal prohibition.³³⁹

Town laws in Sweden as well as in Denmark indicate that the marriage ceremony performed by a priest *in facie ecclesiae* had gained importance in their marriage customs. For example, the Scanian town law insisted that a betrothal was to take place in the presence of a priest and other good men and woman. Moreover, a pledge of gold had to be given. Scandinavian town laws had generally absorbed more features

³³⁵ Salonen, "Finnish Illegal Marriages," 157–158; Salonen, *The Penitentiary*, 257–263, 271. On Denmark, see Ingesman, "Danish Marriage Dispensations".

³³⁶ Present-tense contract only mentioned: (two witnesses) 24.7.1254, *DS I*, doc. 419, 371; 22.5.1355, *DS VI*, doc. 5489, 859; 25.1.1362, *DS VIII*, doc. 6575, 151; (publicly) 21.7.1502, *FMU VI*, 234. Present-tense contract *in facie ecclesiae* mentioned: 12.8.1355, *DS VI*, doc. 5493, 862 (the banns had been read none objecting); 13.8.1355, *DS VI*, doc. 5494, 862 (the banns had been read none objecting). *Sponsalia per verba de futuro* alone mentioned: 23.1.1353, *DS VI*, doc. 5397, 773; 19.3.1353, *DS VI*, doc. 5408, 778.

³³⁷ *FL*, docs. I 23, 55 (banns read), II 15, 64 (marriage contracted *in facie ecclesiae*), II 45, 74 (marriage *in facie ecclesiae* and banns).

³³⁸ E.g. Ribordy, "Mariage," 41–42.

³³⁹ 9.7.1419, *SD III*, doc. 2661, 475–476.

from the German and canon legal traditions, even if the Stockholm town law was much more Swedish in character than the considerably more German town law of Visby presupposing solemnization.³⁴⁰ In the provincial law of Gotland, the oldest existing version dated to the mid-fourteenth century, the ecclesiastical wedding ceremony or nuptial mass was perceived as a normal part of the festivities.³⁴¹ Researchers have noted that this was a local phenomenon of Visby and more widely on Gotland, which, due to its trade links, was more strongly influenced by Continental law. The role and importance of church weddings and nuptial masses was further emphasized in the provincial law of Östergötland. Attention has been called to the fact that the wedding *in facie ecclesiae* became more important in the medieval diocese of Linköping than elsewhere in Sweden.³⁴² Although both of King Magnus Eriksson's mid-fourteenth century laws mentioned the ecclesiastical nuptial ceremony in their chapters on marriage, the language makes it clear that the reading of the banns and solemnization could only take place after the betrothal.³⁴³

The German burghers of the Hanseatic towns probably took their marriage customs, including ecclesiastical solemnization, with them to Sweden. It seems to have been customary for the wealthy German burgers of Stockholm to include the ecclesiastical ceremony in their weddings: the wedding began with an ecclesiastical blessing of the betrothed couple, after which the secular wedding feast and bedding took place.³⁴⁴ The above-mentioned third and illegal marriage of the widow Helleka Horn of Stockholm with Lubbert Kortenhorst is an example of this. On the other hand, the marriage of Margareta, daughter of Jacob Piil from Stockholm, was not ecclesiastical: she had been legally betrothed (*desponsata legitime*) to Sigurd the Shoemaker (*sutor*), who had then 'entered her home intending to cohabit' with her.³⁴⁵ Should the couple have been married *in facie ecclesiae*, the document would hardly have omitted the detail. It may, therefore, be that in this period, i.e. the

³⁴⁰ SkST, 27, 192; Carlsson, "Äktenskapsrätten," 160–161.

³⁴¹ GL, 24, 225. On the Gutalagen, see Inledning, *SLL IV*, lxiv; Carlsson, "Äktenskapsrätten," 161.

³⁴² Carlsson, "Äktenskapsrätten," 161–163. See also RA, Afskrifter ur Vatikan-arkiver, Bullor 1390–1400, Bonifatius IX, 1.1.1400.

³⁴³ MEL, G 2:2, 38; SL 1387 G 2, 15; MESL, G 2:2, 39.

³⁴⁴ SD III, doc. 2661, 475.

³⁴⁵ SD III, doc. 2794, 587.

1410s, the lesser burghers and townspeople had not yet included the nuptial benediction in their regular marriage customs.

Possibly by the end of the century even the humbler people of Stockholm were being married in church. In 1489, the town court of Stockholm, resolving the domestic quarrels of Jacob *lögekarl*³⁴⁶ and his wife, assumed that they had been married in church. The court referred to the spousal duties that Jacob had promised in front of the church door (*for kirkiodören*) to observe. While it is possible that this was only a manner of speech without reference to actual practice, it could also mean that even the humbler townspeople were customarily married in church. In Arboga in 1469 there is a mention of a maidservant having been married in church (*vigias*).³⁴⁷ It is not unreasonable to assume that in Sweden the townspeople and nobility were the first to embrace the ecclesiastical ideal of solemnization. The aristocracy and the town patriciate in Sweden and elsewhere in Europe had much at stake in their marriage alliances and wanted maximal solemnities and legitimation. 'The aristocratic societies... were increasingly concerned with the effective passage of landed estates and kingdoms by hereditary succession. A succession of clearly defined heirs was needed.' By the same logic, the poor and the propertyless had much less to gain through publicity and ceremonies.³⁴⁸

This evidence from the Swedish towns fits the general picture that the ecclesiastical control of marriage formation had made the most progress in towns.³⁴⁹ As to the peasantry, the situation was probably somewhat different although the evidence is scarce. Carlsson takes it for certain that the Swedish peasantry only slowly accepted the church wedding custom.³⁵⁰ This view finds more justification in the continuous efforts of the Lutheran clergy to make the church wedding a part of peasant custom in the seventeenth century. At the same time, however, it has been stated that the social base of the recipients of papal letters broadened considerably in the Late Middle Ages and that this also bears testimony to a demand from below. Per Ingesman has observed that in Denmark non-noble petitioners of marriage dispensations came

³⁴⁶ Söderwall (*Ordbok*, I, 809) is not sure about the meaning of the nickname *lögekarl* and interprets it probably to mean bather, *badare*.

³⁴⁷ 6.6.1489, *SST II*, 352; 30.10.1469, *AST I*, 316.

³⁴⁸ Quotations Brooke, *The Medieval Idea*, 141–142, 154 and Ruggiero, *The Boundaries of Eros*, 31; Brundage, *Law, Sex, and Christian Society*, 363.

³⁴⁹ However, nobility and burghers made up less than five per cent of the population.

³⁵⁰ Carlsson, "Äktenskapsrätten," 161.

largely from the Duchy of Schleswig, where the peasants were relatively wealthy, self-aware and independent landowners. They were consumers of status products, including papal dispensations, and they found it necessary to confirm the ownership of their land by complying with ecclesiastical norms.³⁵¹

Some disputes turned on whether a couple, though lawfully betrothed, had not solemnized their union before the death of either party. In such cases relatives could try to deny the legitimacy of the children. In a case from the town of Jönköping in 1454 witnesses testified that Unne Björnsson had 'lawfully trothplighted and betrothed' (*laghlika trolofwat oc fäst*) a respectable woman, Ingeborg, to be his legitimate wife (*æghthustru*). After the customary banns had been read in church, the solemnization was prevented by Unne's serious illness, which constrained him to his bed for almost a year until his death. This sounds rather straightforward, but apparently the couple had cohabited long enough to conceive three children between the betrothal and Unne's death.³⁵² The couple had not, therefore, been rushing to the altar. Rather, after their betrothal and cohabitation the couple had at some point wished to go through the ecclesiastical ceremony, perhaps only after Unne's illness had started. This would indicate that solemnization had established itself as a moderately desirable, but hardly indispensable ceremony.

The picture of an increasing popularity of ecclesiastical solemnization is supported by the evidence of the months when medieval Swedes contracted marriage and the refusal of the Church to perform solemnizations during major Church feasts. The known dates of marriages extracted from morning gift documents show that ever since the late thirteenth century Swedes (at least the nobility) got married at times approved by canon law. March and May were avoided, probably because of Lent and Whitsuntide. The busy autumn wedding period from late September to late November was interrupted by Advent and Christmas, when weddings were not performed. January, between Christmas and Lent, experienced an upsurge of weddings. Although weddings were organized on all days of the week, Friday was the least popular, probably as a result of ecclesiastical influence. Sunday weddings increased in popularity in the course of the Middle Ages at the expense of Wednesday. More than one third of all betrothed couples

³⁵¹ Ingesman, "Danish Marriage Dispensations," 130–142.

³⁵² RA, Fotostatkopior av pergamentsbrev i Strängnäs läroverksbibliotek, 11.2.1454.

chose Sunday as their wedding day in the Late Middle Ages.³⁵³ In fact, high-ranking clerics, bishops, canons, rural deans and vicars—are mentioned as witnesses of the moning gift letters. This thus creates a presumption that the unions were solemnized. This was even occasionally mentioned expressly.³⁵⁴

This evidence suggests that the nobility, but probably also the common people, was thus increasingly willing to conform to the ecclesiastical calendar in deciding the wedding day.³⁵⁵ However, unlike Norway and Iceland, where laymen were forbidden to marry during the forbidden periods and on certain days of the week, the Swedish norms were directed to the clergy. The Swedish laity seems to have been allowed to marry whenever they wanted—and they did—but priests could not solemnize marriages at any time with impunity. Moreover, there were no prohibitions concerning the days of the week. By contrast, Norwegians who disregarded the prohibitions could be fined from three öres (marriage on Tuesday evening) to three marks (marriage during major feasts, marriage on Thursday or Saturday evening), while Icelanders tying the knot during a major feast or Lent could face outlawry.³⁵⁶

Perhaps it is telling that couples that had got betrothed (and possibly even had intercourse) asked permission to consummate the initiated marriage (*consumandi inceptum matrimonium*) through the wedding and solemnization. The same expression is repeated in the vernacular (e.g. *fulborda påbegyntt ähtenskaap*) in a similar context in late-sixteenth-century chapter records.³⁵⁷ Obviously, ecclesiastical solemnization brought with it a presumption that the union was in accord with church law and the children were legitimate: the public nature of the ecclesiastical ceremony and the banns added to the validity to the union. With time, the lack of this presumption of solemnization *in facie ecclesiae*, was viewed by some people differently. No solemnization, no marriage, no legitimate children. But how had the Church influenced the Swedish perceptions of

³⁵³ Korpiola, “Tempus nuptiarum”, 638–642.

³⁵⁴ E.g. 30.1.1335, doc. 3108, *DS IV*, 412.

³⁵⁵ See also the statutes of the provincial council of Arboga 1396, *SS*, 98.

³⁵⁶ Borgarthingslov, I:7, *Bruchstücke der Rechtsbücher*, 14–17. See also Eidsivathingslov, I:20–21, *Bruchstücke der Rechtsbücher*, 92–95; *Isländisches Recht: Die Graugans*, IX:148, 268–269.

³⁵⁷ 6.6.1524, 229, *BHBR*, 229; e.g. 28.1.1596, UDP, 104, ULA; 12.12.1599, VDP A I:2, 16v, VDA. But see Iudicium synodale 1524, 238, *BHBR*, 307; 7.2.1525, 304, *ibid.*, 358–359.

legitimacy? It is time to look more closely at the success of the Church in defining the status of children in medieval Sweden.

3.5 *Legitimacy of Children and The Marriage Process*

Traditional Scandinavian Notions of the Status of Children: Grading Inheritance Rights

One of the main purposes of marriage is that it permits others to recognize the parents of a child, particularly the father, and to establish descent or kinship. Thus matrimony is perceived as 'the acceptable means for conferring an identity on children', while the concept of legitimacy, or recognition of legal fatherhood at least, is widespread.³⁵⁸ Social parenthood, however, does not necessarily have to be biological. Indeed, marriage has even been defined using the status of the children as the main factor. The Swedish historian David Gaunt, according to whom producing offspring was the primary function of marriage in older times, has defined marriage as a union between a man and a woman, whose mutual children were entitled to full civil rights.³⁵⁹

While marriage has been important in most cultures for determining legitimacy, one consequence of this distinction draws between matrimony and other unions, such as concubinage. As the Greeks put it, while concubines were for pleasure, wives were for producing legitimate offspring. The Romans also clearly linked the begetting of legitimate issue with marital intent.³⁶⁰ Conversely, proving that someone was illegitimate, depending on the cultural definition of this term, was the most effective way of excluding him from an inheritance.³⁶¹ Legitimacy and illegitimacy are important subjects in discussing licit and illicit sexuality as the products of such unions. However, it has been described an outstanding paradox of European family history that matrimony has not been clearly and consistently defined.³⁶² According to Welsh law,

³⁵⁸ Quale, *A History of Marriage Systems*, 2, 305; Murphy, *Cultural and Social Anthropology*, 74. See also Westermarck, *The History*, I, 26–28, 71–75.

³⁵⁹ Gaunt, *Famijeliv*, 63.

³⁶⁰ Brundage, *Law, Sex, and Christian Society*, 13; Treggiari, *Roman Marriage*, 5, 8–9, 58, 84, 197; Reynolds, *Marriage*, 17–18.

³⁶¹ E.g. *FL*, doc. I 4, 46–47; ULA, Dalarnas dombok, 16.3.1552, 216v; 17.2.1565, Konung Erik XIV:s nämnds dombok, 176–177. See also Jochens, "Consent," 142–143; Arnórsdóttir, "Icelandic Marriage Dispensations."

³⁶² Laslett, "Introduction," 9–11.

for instance, the duration of the marital union was decisive. After seven years any women cohabiting with a man was considered a wife, while even a wife betrothed and married by her kin had not yet acquired all the rights of a wife unless the union had lasted seven years. This came to be in conflict with ecclesiastical law in the Middle Ages as a woman, lawfully married according to the law of the Church, was immediately considered a legitimate wife with all the accompanying rights. One type of union, the most formal, was increasingly seen as lawful wedlock in opposition to the rest.³⁶³ Marriage has thus varied in time and place, which also means that the definition of illegitimacy has also varied in different parts of Europe.

Irish and Welsh customary law, determining the status of children according to acknowledged paternity, are examples of a contrary tradition that also demonstrate the interdependency of the status of mothers and their children. In Ireland, the law distinguished between nine types of unions grading the women's rights and obligations. The most stable and 'marital' of these unions classified her status and input of property *vis-à-vis* her husband's and whether or not she had been publicly betrothed and married off by her kin. 'There is no sharp division between lawful or unlawful, but rather a general shading off'.³⁶⁴ '[W]here no distinction is made between legitimate and illegitimate children, the difference between legal and illegal wives loses much of its force'.³⁶⁵ Indeed, that there was no gulf between legitimate and illegitimate children in Irish and Welsh law was partly due to the partial informality of marital unions and the ease of their dissolution, partly to the unilineal nature of the society: women only inherited land in default of male heirs in order to transmit in on to her children.³⁶⁶ In Welsh law, any or all children could be considered legitimate or illegitimate regardless of the marital status of its parents. A father could confirm his paternity and make the child part of his kin if the child was begotten 'in the legal bed' and reared at his expense for a year and a day, it was acknowledged. Contrariwise, the father could repudiate any child born to his wife within the time. If he contributed to the maintenance of a

³⁶³ Charles-Edwards, "Nau kykywedi teithiauc," 35–38; McAll, "The Normal Paradigms," 16–17; Owen, "Shame and Reparation," 45.

³⁶⁴ Charles-Edwards, "Nau kykywedi teithiauc," 35–38, quotation on 37.

³⁶⁵ Cosgrove, "Marriage," 34.

³⁶⁶ Cosgrove, "Marriage," 33–34; Davies, "The Status of Women," 106–107; McAll, "The Normal Paradigms," 17–19.

child even if clandestinely begotten, paternity was also undeniable. If its mother formally affiliated the child in church, by swearing on the altar and relics that a certain man was its father, the father would either accept the child as his or disown it by a similar oath. Such a definition of 'legitimacy' was bound to cause conflicts with ecclesiastical law as the Church considered that only the wife married in accordance with canon law could give birth to legitimate children.³⁶⁷

Swedish law tended to distinguish the status of children through their capacity to inherit, which varied according to the parents' status and the mother's status. Swedish society, like the rest of Scandinavia, knew the institution of concubinage. Especially chieftains and the wealthy or powerful were in a position to have concubines to cement alliances, to display patronage, as a display of status or merely for pleasure. Moreover, slave women were sexually available to their masters.³⁶⁸ The picture given in the Swedish earlier laws is of a society, in which the question of legitimacy was defined through various—and different—parameters, although the Church was undoubtedly making headway in imposing its norms regarding legitimate birth. This also applies to the other Scandinavian kingdoms.

Using the criterion of inheritance rights, before the breakthrough of the canonical dogma Swedish society divided children in three categories: first, children who inherited directly according to law; second, children whose inheritance was limited or whose paternal inheritance rights depended on the goodwill of their father, and third, children who did not inherit at all.³⁶⁹ In fact, it has been claimed that before the ecclesiastical influence in Scandinavia increased from the twelfth and thirteenth centuries onward, illegitimate and legitimate children had the same status and both were part of the family because the secular society did not distinguish between the two groups. In the Scandinavian Middle Ages there were 'two irreconcilable perceptions of legitimacy': the ecclesiastical being based on a new legal definition of marriage and the secular 'associated with the traditional culture of society'.³⁷⁰

³⁶⁷ Jenkins, "Property Interest," 86, 90–92; McAll, "The Normal Paradigms," 16–17.

³⁶⁸ Karras, "Servitude and sexuality;" Lagus, *Om oäkta barns rättsförhållande*, 4–8; Jochens, *Women*, 35. See also Ross, "Concubinage," 1–7.

³⁶⁹ See also Reynolds, *Marriage*, 109.

³⁷⁰ Nors, "Illegitimate," 19–20.

Before the advent of Christianity, only one woman was acknowledged as a wife at a time and her children were in the best position to inherit.³⁷¹ The oldest Scandinavian laws, such as the *Gulatingslov*, insisted that in order for the children to be legitimate their father had had to betroth the mother in the presence of witnesses and give a minimum sum to the woman's guardian for her *mund*. In addition, after the public wedding and after spending the night together, he had to give her the morning gift he had promised at the betrothal. Icelandic law contained similar provisions, while Danish law insisted that the woman be 'betrothed with gold'.³⁷² The infant's father acknowledged his paternity, but before this ceremony the father had the right to have the infant exposed and abandoned when the midwife brought the child to him and laid it on the ground before him. After the baptism (*vattenösning*) or 'laptaking', the child received its name and became truly a member of the kin group and society.³⁷³

The children of a concubine or *frilla*,³⁷⁴ had more limited inheritance rights. The law of Gotland, which showed considerable preference to children of Gotlandic descent on both sides, gave illegitimate children limited inheritance rights to paternal chattels especially if the father had no legitimate sons. A Gotlandic man had also to provide for his illegitimate children until the son was fifteen and the girl eighteen. If they no longer wished to remain with him, he had to give them certain chattels in the presence of witnesses.³⁷⁵ Some laws depended on the public acknowledgement of paternity by their father at the assizes.³⁷⁶ In Denmark it may have been that voluntary admission of paternity at the assizes had come to replace the earlier practice according to which an illegitimate son could prove his paternity against his father's will by the ordeal of the red-hot iron. Even in such a case the amount of

³⁷¹ Sawyer – Sawyer, *Medieval Scandinavia*, 169.

³⁷² Holtan, *Ekteskap*, 38, 31; Gaunt, *Familjeliv*, 61; Hastrup, *Culture and History*, 90, 93–95; SkL, Om arv, 60, 15.

³⁷³ Almquist, *Svensk rättshistoria*, 190; Hastrup, *Culture and History*, 97; Jochens, *Women*, 81–82. Cf. Treggiari, *Roman Marriage*, 428.

³⁷⁴ The concubine was in Swedish called *frilla* (Icel. *fríðla*) which derives from German *fridila*, *vriedel(e)*, meaning beloved, bride and wife, Söderwall, *Ordbok*, I, 337; Lexer, *Mittelhochdeutsches Handwörterbuch*, cols. 513–514.

³⁷⁵ GL, 20:14, 221–222. See also GL 20a:15, 222–223.

³⁷⁶ For Anglo-Saxon England and Celtic Ireland and Wales, see Ross, "Concubinage," 16; Cosgrove, "Marriage," 31. See also Nicholas, *The Domestic Life*, 154.

inheritance could be limited, especially if the man had children born of his legitimate wife.³⁷⁷

The children of concubines (*slækæfrith*, *slökjfrith*) always inherited their mother and her children, but not their father. Their father had the option, however, to donate property to them by publicly acknowledging them and the donation at the assizes. This recognizing of kinship by the father created mutual rights, as only after this was he able to inherit after his illegitimate children or receive fines for homicide if the child was killed and reciprocally answer for its fines. Using this procedure the father could donate *mortis causa* all his property to his concubine's children, but if he afterwards sired legitimate children, the inheritance lot of the illegitimate child would be reduced to half of the legitimate child's. The acknowledgment of paternity at the assizes created reciprocal kinship ties between the natural child and its paternal kin.³⁷⁸ In a largely similar way, in Anglo-Saxon England concubines had no legal recognition, but some customary privileges, such as belonging to their lovers' households, and their position was not necessarily dishonourable. Moreover, the children of concubines could inherit from their fathers provided that the fathers had acknowledged paternity.³⁷⁹

The children of slave women did not inherit at all, probably because their mothers could not own property and could not have any independent legal rights.³⁸⁰ If a slave and a free person had a child, it followed 'the better half' and was born free.³⁸¹ In Iceland even a child of a free mother and slave was unable to inherit from its maternal kin, even if the slave had been manumitted. Likewise, if a legitimately married beggar couple had children, these could not inherit. In medieval Icelandic law illegitimate relatives were counted among the kindred in family matters: they were entitled to inherit and function as legal guardians in default of certain closer relatives. Illegitimates were proportionally below the status that they would have occupied if legitimate: they inherited in default of legitimate children, parents or siblings. But if there were no closer kin, illegitimate children or siblings were entitled to inherit

³⁷⁷ SkL, Om arv, 59, footnote 138. See also *JL*, 1.22, 22–23; Jacobsen, "Sexual Irregularities," 80–81.

³⁷⁸ E.g. SkL, Om arv, 59, 63–64, 14–15; *ibid.*, Om hor och lägersmål, 223, 126; *ibid.*, Additamenta, IV:6, 150; *JL* 1.21–22, 20–23, 2.20, 64–65; Nors, "Illegitimate," 23.

³⁷⁹ Ross, "Concubinage," 6, 16.

³⁸⁰ ÖgL, Ä 13, 130. Hastrup, *Culture and History*, 91, 114–115. See also SkL, Om arv, 62, 15.

³⁸¹ SdmL, Ä 3:1, 74; ÖgL, Ä 14, 26 p 130, 134; VmL, Ä 14, 52; DL, G 4, 79.

or entitled to function as the legal guardian of a female kinswoman without any further limitation.³⁸²

Nevertheless, in Swedish society it was possible that children who were legitimate in all respects might not inherit, which put them in the same position as bastards. Apparently, before the advent of Christianity a child was considered able to inherit if it had been born alive and was able to receive milk. Such a provision can be found in both the Swedish Law of Uppland and the Icelandic *Grágás*.³⁸³ Swedish law also made an exception of children fathered by an outlawed man. Because an outlaw had lost his legal personality and civil rights to some degree, he or his children could not receive any inheritances until he had again been taken into the protection of the peace. If the child had been sired before the father was declared an outlaw, it inherited. If the outlaw fled abroad with his wife, children begotten abroad did not inherit unless the outlawry was revoked and the child was born in Sweden.³⁸⁴ If the outlawed husband fled and clandestinely visited his wife, who had remained at home, and begot children with her, the child could not inherit after its father. It was contemptuously called a 'bush child' (*rishofpe*), a child who had been born out in the bushes.³⁸⁵ The same principle, that any child born to an outlaw was unable to inherit, was also applied in Icelandic law and certain versions of the *Sachsenspiegel*.³⁸⁶ In another special case a child whose parents never had exchanged any marriage promises was allowed to inherit under Swedish law. This exceptional case involved a child, who had been conceived through rape, 'under struggle and screams', as the law of East Gothia expressed the matter, and who inherited as a legitimate child.³⁸⁷ The

³⁸² Lagus, *Om oäkta barns rättsförhållande*, 93–97; Lehmann, *Verlobung*, 14–16, 27; Jacobsen, "Sexual Irregularities," 75; Hastrup, *Culture and History*, 82–83, 115; Jochens, *Women*, 21.

³⁸³ UL, Ä 11:1, 70; Carlsson, *Jag giver dig min dotter*, II, 168–170, 174. See also SdmL, Ä 3:4, 74–75; VmL, Ä 12:4, 51.

³⁸⁴ UL, Ä 20, 74; VmL, Ä 16, 52; MEL, Ä 7, 7:2, 60; KtL, Ä 8, 8:2, 53. Cf. SdmL, Ä 4, 75.

³⁸⁵ UL, Ä 20:1, 74; VmL, Ä 16:1, 52–53; SdmL, Ä 4, 75; HL, Ä 13:8, 308. MEL, Ä 7:2, 60; KtL, Ä 8:1, 53. In earlier medieval Scandinavia outlawry had meant hiding in the forest rather than fleeing abroad and in Iceland the major outlawry was called 'forest-going' (*skogsgangr*), Hastrup, *Culture and History*, 137–142.

³⁸⁶ Hastrup, *Culture and History*, 139; Jochens, *Women*, 79; Lagus, *Om oäkta barns rättsförhållande*, 119–120.

³⁸⁷ SdmL, Ä 4:2, 75; HL, Ä 13:2, 307; ÖgL, Ä 8:1, 127; UL, Ä 20, 74; VmL, Ä 15, 52. Cf. *The Saxon Mirror* I: 37, 80.

other Scandinavian laws seem not to have any direct parallel to this notion.³⁸⁸

The Danish and Norwegian laws distinguished between various kinds of children born out of wedlock. There was a difference between children of concubines (D. *slegfredbarn*) or children of lasting relationships between free parents (N. *hornongr*) and children begotten in clandestine liaisons (N. *risungr*) the distinction probably being in the attitude of the woman's family. Concubinage was lawful when the woman's kin consented, while in a secret affair the man was punishable with a fine, which was to be paid to the woman's kin. There was also a difference in the status of the children. Old Norse and Danish law also categorized the children of free fathers and unfree mothers (*thyborin*) into a separate class, but when slavery was abolished, this categorization lost its foundation and disappeared.³⁸⁹

In medieval Scandinavia illegitimate children seem also to have been occasionally acknowledged as heirs in default of closer heirs such as legitimate sons, daughters, parents, brothers or sisters. For example in medieval Denmark and Norway, illegitimate birth had been no insurmountable barrier to the throne.³⁹⁰ However, due to the influence of the Church, the favourable attitude toward illegitimate children in the absence of legitimate children may have changed with time. In a case from the early thirteenth century a man has donated land to the monastery of Nydala for the soul of his only legitimate son. Later, however, his illegitimate heir claimed the property, but the king confirmed that the property had been lawfully willed to the Cistercians.³⁹¹

Canonical Classifications of Legitimacy and Illegitimacy

As the Church played the most important role in determining the legitimacy of a marriage, it was also instrumental in defining illegitimacy. Earlier in the Middle Ages the Church linked legitimacy to the position to inherit, calling children with full inheritance rights after their parents under secular law *liberi legitimi*. The Church had linked its view of a valid and legitimately contracted marriage, *matrimonium legitimum*, with the observance of secular marriage customs and rites, while the legitimacy

³⁸⁸ Lagus, *Om oäkta barns rättsförhållande*, 42.

³⁸⁹ Jacobsen, "Sexual Irregularities," 78; Jochens, *Women*, 21, 79; Nors, "Illegitimate," 31.

³⁹⁰ E.g. Jochens, *Women*, 94–97; Nors, "Illegitimate", 17–19.

³⁹¹ *DS I*, doc. 138, 138.



6. *De differentia legitimorum, & illegitimorum filiorum* by Olaus Magnus Gothus. Roma, 1555. This image mocks illegitimacy and bastard branches of noble families. The man in the left, displaying his coat-of-arms, is legitimate. The roaring lion represents the family virtues and courage. The man on the right is illegitimate which is why his escutcheon shows the slash indicating bastardy known as the baton sinister. The lying ass was perhaps considered a suitable heraldic animal for an ignoble bastard as in literary works many vices were linked to illegitimates. However, in Sweden the attitudes to illegitimacy were rather practical, and bastards were usually known by their patronymic even though they did not inherit noble status.

of the children was associated with full inheritance rights. However, later in the Middle Ages the congruity with and the dependence on the definition of secular law was abandoned. The Church acknowledged as legitimate those children who were born out of a union recognized by the Church, regardless of the position of the secular law, and the position taken by the church courts concerning the child's status and inheritance rights came to regulate the view of the secular courts. *Filii legitimi* need not necessary also be *hereditabiles*, able to inherit.³⁹² The Church's view on matrimony as the one and only accepted outlet of sexuality was victorious in the long run. Despite the growing control of the church on marriage and on the definition of legitimacy, there were competing and conflicting views on legitimacy in medieval Europe as discussed above in the previous chapter.

As classical canon law developed in the course of the twelfth century, a clearer line between legitimate and illegitimate birth developed. Canon law accepted the classical Roman legal presumption of paternity that the husband of a married woman was to be presumed the father of her child (*pater est quem nuptiae demonstrant*).³⁹³ Probably the intent of this provision was to ensure that the stability and peace of the community was not jeopardized by unfounded claims which offended the honour of both the wife and her husband. Moreover, the ownership of property could be called into question, which could threaten the equilibrium of the community and disrupt the order. According to a learned legal presumption, moreover, if a father mentioned the child in a public document without the additional adjective 'natural', it was to be presumed to be legitimate.³⁹⁴

Classical canon law divided illegitimate birth into two subgroups. If a person had been born of an incestuous or adulterous liaison (*natus ex damnato coitu*) between persons who could not be married because of an existing impediment, he was a *spurius*. Such a child could not receive any inheritance from its parents. Canon 17 of the Second Lateran Council of 1139 had declared that even civil law branded with infamy all children born of unions of blood-relatives. In addition, such children were dispossessed of all hereditary rights: titles, lands and property.³⁹⁵

³⁹² Freisen, *Geschichte*, 75–76, 80–83, 140–141, 158, 857–858. See also Kuehn, *Illegitimacy*, 34, 47.

³⁹³ D 2.4.5; Treggiari, *Roman Marriage*, 307; Kuehn, *Illegitimacy*, 37–38.

³⁹⁴ Mundy, *Men and Women*, 81.

³⁹⁵ X 4.17.4, X 4.17.10; Kuehn, *Illegitimacy*, 34–37.

Children of nuns were also placed into this group by the eighth century: neither the child nor its mother had any rights to the father's property and if the child was killed, its mother's part of the *wergild* was to go to the king and the other half to paternal kin.³⁹⁶ Later in the High Middle Ages the children of religious, monks or nuns, and clerics in higher orders were all categorized as *spurii*, as their parents were unable to marry each other. If the child had been begotten in fornication between two otherwise eligible persons, it was called a natural child (*naturalis*).³⁹⁷ Unlike legitimate children, illegitimate or natural children, unless they were legitimized, were not under their father's authority, or *patria potestas*, where the institution existed.³⁹⁸

In about 1150, canonists had also created the special category of putative children, i.e. children who could profit from their parent(s)'s good faith. If the couple had been married in church, had been unaware of an impediment between them and nobody had objected to the union, their children, though in principle spurious, were considered putative and thus allowed to inherit as legitimate children. This rule came also to be applied if one spouse was ignorant of the impediment and the other not. This doctrine became an incentive for couples to favour solemnization *in facie ecclesiae* by the statutes of the Fourth Lateran Council in 1215.³⁹⁹ It was even accepted in secular laws, such as the *Sachsenspiegel*.⁴⁰⁰

Legitimation by subsequent marriage (*legitimatio per subsequens matrimonium*) was an institution originating in Roman law and adopted by Romanistically influenced canonists like Ivo of Chartres and later Stephen of Tournai (1135–1203). While originally applied only to legitimate the children of a live-in concubine by an exchange of a dotal instrument, the institution came to be applied more broadly.⁴⁰¹ By marrying each other later, two single persons, between whom no impediment existed, could legitimize any earlier conceived natural

³⁹⁶ Sheehan, *Marriage, Family and Law*, 80.

³⁹⁷ Kuehn, *Illegitimacy*, 34–37. An illegitimate child could also be defined as a *nothus* if born from a known father, or a *spurius* if his father was unknown, Ross, "Concubinage," 17.

³⁹⁸ Kuehn, *Law, Family & Women*, 160–161, 198–199; Kuehn, *Illegitimacy*, 34–46.

³⁹⁹ Landau, "Ehetrennung," 182–183; Brooke, *The Medieval Idea*, 152. See also *On the Sacraments of Hugh of Saint Victor*, 2.11.4, 328; Canon 51, *Constitutiones Concilii quarti Lateranensis*, 91–92 and the discussion in Joannis Tevtonici apparatus, *ibid.*, 259.

⁴⁰⁰ *The Saxon Mirror*, III:27, 122.

⁴⁰¹ Mayali, "Note on the Legitimization," 57–58.

children. The marriage changed retroactively the legitimized child's status into that of a legitimate child in all respects. Not only was it able to inherit, but also could accede to ecclesiastical dignities.⁴⁰² Legitimation by subsequent matrimony became one of the canonical means of emphasizing the status of marriage by providing an extra incentive for couples whose relationship has been criminal and sinful, to partake of the sacrament of marriage. Or, in other, slightly darker tones, it became 'an instrument of control and reinforcement of a more rigorous matrimonial discipline'.⁴⁰³ After some initial hesitation among canonists, however, the possibility of legitimizing children by subsequent marriage was denied to parents who had conceived their children in an adulterous or incestuous relationship. A *naturalis* could be legitimized by marriage, a *spurius* could not.⁴⁰⁴

According to Freisen, in the Middle Ages, when the canon law of marriage was acknowledged by the secular law, the conflict concerning secular and ecclesiastical notions of legitimacy between canon and secular law disappeared.⁴⁰⁵ But this did not take place everywhere to the same extent, nor in the same timetable. Although the Church's definition came to be enforced in ecclesiastical courts, and thus slowly came to dominate and prevail, the two notions of legitimacy were not necessarily identical. This is largely, but not completely, true even of medieval Sweden, as will be discussed below.

Converging Variants of the Definition of Legitimacy: Canonical Influences on Sweden

The legal status of illegitimate children deteriorated in the Middle Ages all around Europe due to the Church's pressure for indissolubility, monogamous unions and marriage formation regulated by its laws and controlled by its officials. The Church combatted the privileges of concubines and their children and by labelling the institution of concubinage as both immoral and illicit, it dispossessed both the women and their children of their former rights.⁴⁰⁶ The exclusive control claimed

⁴⁰² X 4.17.1; Mayali, "Note on the Legitimization," 62, 67; the latter, however, had been denied by Huguccio. See also Kuehn, *Illegitimacy*, 49–66.

⁴⁰³ Mayali, "Note on the Legitimization," 56.

⁴⁰⁴ X 4.17.6; Mayali, "Note on the Legitimization," 62–72; Kuehn, *Illegitimacy*, 50.

⁴⁰⁵ Freisen, *Geschichte*, 858.

⁴⁰⁶ Ross, "Concubinage," 6, 18–34. See also *The Saxon Mirror*, I:48 and 51, III:46, pp. 82–83, 127; Lagus, *Om oäkta barns rättsförhållande*, 122–123.

by the Church was also actively resisted in some regions; the English temporal lords had refused to accept the canonical rule of legitimation of subsequent marriage at Merton in 1236.⁴⁰⁷ The Danish bishop of Ribe, together with a papal delegate, tried to have priests stop cohabiting with their *de facto* wives and children, and threatened the clerical offspring with disinheritance if their fathers did not embrace celibacy. This, however, proved to be unenforceable, as the children's kinsmen did not accept the Church's tampering with secular inheritance rules.⁴⁰⁸

This development also had its effects on medieval Sweden. Originally, parental status and acceptance had been of greater importance. Many Danish and Norwegian kings were, in fact, sons of concubines, until the succession laws under the Church's influence debarred illegitimate sons from the throne first in theory, but later also in practice in the 1100s and 1200s.⁴⁰⁹ The mid-thirteenth century *lagmän* of West Gothia were apparently able to 'suppress many heathen customs of our law and deprive concubines' children of their inheritance rights.⁴¹⁰

In his letter of 1216 to the Swedish bishops, Pope Innocent III repeated the statutes of the Fourth Lateran Council of 1215. He stressed that the offspring of unions within the prohibited degrees were unconditionally considered to be illegitimate if their parents had married clandestinely, i.e. without the banns and ecclesiastical wedding, even if they had been ignorant of the kinship between them. Ignorance of the existence of such an impediment could otherwise have legitimized the children of a putative marriage in which one or both parties were in good faith. However, in this case the pope declared that children were not to profit of their parents' ignorance if it could be presumed that the ignorance was feigned. If the parents had married in spite of the Church's prohibition, the children born of the union were also be considered illegitimate.⁴¹¹ In Norway this was repeated in the statute of King Erik of 1280, while in Sweden the synodal statutes also mention

⁴⁰⁷ Sheehan, *Marriage, Family and Law*, 257; Pollock – Maitland, *The History*, I, 122, 127, 131–132, 179, and II, 376–378, 383–384, 397–398; Friedberg, *Das Recht der Eheschliessung*, 54–55.

⁴⁰⁸ Dübeck, "Women," 318.

⁴⁰⁹ Hastrup, *Culture and History*, 89; Sawyer – Sawyer, *Medieval Scandinavia*, 171; Nors, "Illegitimate," 17–18. See also Ross, "Concubinage," 17–18, 27.

⁴¹⁰ Westman, *Den svenska kyrkans utveckling*, 298.

⁴¹¹ 5.4.1216, *DS I*, doc. 156; Carlsson, *Jag giver dig min dotter*, II, 68–69.

this in the late thirteenth century.⁴¹² The 1241 Law of Jutland introduced a new category of illegitimacy: *horbarn* or adulterine children, which shows ecclesiastical influence more clearly by encompassing the category of *spuri*, all children whose parents could not be married because of a dirimental impediment between them.⁴¹³ The Norwegian law of 1274, enacted by Magnus Lagaböte, 'the Law-Amender', continued to give illegitimate children some role as heirs, though they had far fewer rights than legitimate children and close kin. The additional demands were that they had to have been acknowledged by their father and that they had not been sired within the forbidden degrees, i.e. they did not fall into the category of *spuri*. Similar sections disinheriting *horbarn* appeared also in Icelandic law.⁴¹⁴

Due to Christian influence, a distinction was made between 'Christian' i.e. baptized and 'heathen' meaning unbaptized children. If an infant died before it had been baptized, it was unfit to inherit its parents no matter how otherwise legitimate it was. Heathens, legitimate or illegitimate, could not inherit.⁴¹⁵ A similar paragraph can also be found in the *Lex Visigothorum* and in the rest of Scandinavia. In his paraphrase of the Law of Scania the Danish Archbishop Anders Sunesen explained that if a person had not been reborn by the sacrament of baptism, he had not been born at all and consequently could not inherit.⁴¹⁶ This lack of capacity to inherit applied also to primsigned (*prima signatio*), but unbaptized children.⁴¹⁷ This stipulation was inspired by ecclesiastical influence with the intent to persuade parents to have their new-born infants baptized at once, instead of delaying for weeks, even months. However, such provisions are not known in contemporary canon law, and they have even been judged to be contrary to natural law, according

⁴¹² Lehmann, *Verlobung*, 91. For Sweden, e.g. Synodal statutes of Linköping 1374–1391, SS, 64.

⁴¹³ *JL*, 1.25, 24–25; Nors, "Illegitimate," 27–29, 31–34.

⁴¹⁴ Sawyer, *Kvinnor och familj*, 41; Lagus, *Om oäkta barns rättsförhållande*, 113–114.

⁴¹⁵ SdmL, Kk 9, 18; HL, Å 13:7, 308; DL, G 12, 82; VmL, Å 10:1, 49. *MEL*, Å 4 and 9, 59–61; *KrL*, G 22, 50, Å 5, 52; *MESL*, G 17, 46 and Å 4, 57; *SL 1387*, G 17, 22 and Å 4, 24–25; Carlsson, *Jag giver dig min dotter*, II, 124–125, 162–173, 223–226. The only exception was when a pregnant widow had been killed by one of her deceased husband's kinsmen because they wanted to prevent the possibility that the mother might inherit after the child. In such cases the law was interpreted as if the child had been born and baptized, 'because nobody may kill another in order to inherit', ÖgL, Å 7, 126–127. *MESL*, Å 8, 58; *SL 1387*, Å 8, 26; *MEL*, Å 9, 60–61; *KrL*, Å 10, 54–55.

⁴¹⁶ SkL, Om arv, 3–4, 3–4; *JL* 1.1–2, 8–9; Skovgaard-Petersen, "Kirkens etablering," 72; Carlsson, *Jag giver dig min dotter*, II, 164–165, 173–174, 176–178, 229–231.

⁴¹⁷ VgL I, Kk 1, 3; VgL II, Kk 1, 203; Carlsson, *Jag giver dig min dotter*, II, 163–164.

to which pagans and non-Christians were able to inherit in accordance with their respective inheritance rules.⁴¹⁸ This provision emphasized the importance of baptism in general and emergency baptism in particular if the mother died before the child was born.⁴¹⁹

The section on inheritance of Magnus Eriksson's Town Law noted that the right to inherit went according to canon law. 'It is just and in accordance with the law that the inheritance went to the person whose kinship was clearly closer according to the law of the church (*then openbarare skylskap eptir kirkiona rät til hafuer scal ärfua*)'. However, if the matter was disputed and the kinship less than obvious, the town court was to look into the case and give the inheritance to the closer relative who could confirm his parentage with six oath-helpers.⁴²⁰ Swedish law also came to adopt the canonical presumption of paternity. The law of Dalarna expressly claims that if a child had been born 'in the marriage bed' its paternity could not be disputed in court. The law of West Gothia concurred: 'he who sleeps with her every night and is married to her according to law' is the father of the married woman's child. Her husband's heirs could not dispute this after his death.⁴²¹

It would seem clear, however, that if a woman run away from her husband, her children were no longer automatically presumed to be his. At least, if a legally married woman was forcibly separated from her husband and she then gave birth to a child within forty weeks since she had been in her husband's bed, the child was its father's heir.⁴²² The law of Uppland took the term of a normal pregnancy to be nine months or 'lawful months', but even a child born ten months, i.e. within the so-called 'delay month', after the husband's death was considered to have been sired by him. Should her delivery take place later, the child was reckoned a 'whorechild' (*horbarn*) and unable to inherit.⁴²³ The later royal laws confirmed this rule without using words indicating moral

⁴¹⁸ Ericsson, *Den kanoniska rätten*, 55.

⁴¹⁹ 15.3.1361, *DS VIII*, doc. 6445, 36–37; 26.9.1360, *ibid.*, doc. 6351, 373–374.

⁴²⁰ *MESL*, Ä 11, 59; *SL 1387*, Ä 11, 27. The Laws of the Realm did not explicitly mention that the ability to inherit went according to the law of the Church, *MEL*, Ä 13, 62; *KrL*, Ä 15:1, 56.

⁴²¹ *DL*, G 8, 80. See also *VgL I*, Ä 8:1, 77; *VgL II*, Ä 11, 271, Add. 12, 391; *VmL*, Ä 7:2, 46.

⁴²² *MEL*, Ä 5, 59; *KrL*, Ä 6, 52. *MESL*, Ä 5, 57; *SL 1387*, Ä 5, 25; *UL*, Ä 16:2, 72.; *HL*, Ä 13:3, 307.

⁴²³ *UL*, Ä 10:1, 69; *VmL*, Ä 10:1, 49; *HL*, Ä 10:1, 306; *DL*, G 12, 82; *KrL*, G 22, 50; Carlsson, *Jag giver dig min dotter*, II, 124–125, 167–168. See also Brundage, *Law, Sex, and Christian Society*, 224.

indignation, but stating only that a child born ten months after the death of its mother's husband did not inherit him.⁴²⁴ In addition, if the husband could prove his wife's adultery in court, he could probably also deny having fathered her child; this is indicated in early-seventeenth-century legal texts.⁴²⁵ Children, between whose parents there existed an impediment, were also considered unable to inherit.⁴²⁶

The Church's dogma of legitimation through subsequent marriage (*legitimatio per subsequens matrimonium*) was accepted in medieval Swedish laws although it came to cause problems and lawsuits.⁴²⁷ In contrast, in Denmark the doctrine had been initially rejected, but later acknowledged.⁴²⁸ Nevertheless, in certain Swedish laws it was known as legitimation through subsequent betrothal. Thus the betrothal of a man and the mother of his child(ren) with lawful forms and witnesses sufficed to legitimize the children.⁴²⁹ The reason for this aberration is unknown. It might reflect the significant role of the betrothal in Swedish marriage formation, it might be an effort of the Church to make it easy for men to make honest women out of their former concubines, or it might be an erroneous interpretation of the Latin *desponsatio* or *sponsalia*. The children of the betrothed bride were considered to be on par with those of the legitimate wife (*adhalkunu barn*) and thus able to inherit.⁴³⁰ According to the law of Uppland, even the child of two slaves who were betrothed and their union solemnized were legitimate, free and able to inherit.⁴³¹

A natural child's (*frillobarn*, literally concubine's child)⁴³² parents were usually able to inherit. In this event, the father took two thirds and its

⁴²⁴ MEL, G 23, 46; K²L, G 5, 132–133; MESL, G 17, 46; SL 1387, G 17, 22. In 1572 the synod of Uppsala quoted foreign authorities in stating that a child born even eleven months after the death of the husband was legitimate, BSKH, 27.

⁴²⁵ Johan Skyttes kommentar 1608, Ä, Cap. 13.2, 53.

⁴²⁶ E.g. 11.3.1555, GFR 25, 79.

⁴²⁷ SdmL, Ä 3:1 74; ÖgL, G 5, 102; UL, Ä 18, 73; VmL, Ä 13:2, 52; VgL I, Ä 8:3, 77; VgL II, Ä 12, 271. MESL, G 2:4, 38–39; SL 1387, G 2, 15–16; MEL, G 2:5, 40; K²L, G 2:4, 44.

⁴²⁸ SkL, Om arv, 60, 15. For a similar initial rejection of the doctrine in Iceland, see Frank, "Marriage," 476; Cf. SkL, Additamenta, III:6, 149; J²L, 1.25, 24–25.

⁴²⁹ UL, Ä 18, 73; VmL, Ä 13:2, 52; HL, Ä 13:6, 307; VgL I, Ä 8:3, 77; VgL II, Ä 12, 271. Cf. HL, Ä 13:1, 307; solemnization also had the same effect. See also *Landrecht des Königs Magnus Hakonarson*, V. Erfðatal 7.10, 164–165.

⁴³⁰ ÖgL, G 5:1, 102; UL, Ä 18, 73; VmL, Ä 13:2, 52; VgL I, G 6, 98; VgL II, G 7, 284, Add. 12:2, 392.

⁴³¹ UL, Ä 19, 73.

⁴³² Cf. SdmL, Kk 15:4, 22–23: a child born to an unmarried woman and married man was called a *frillobarn*.

mother one third of the property. Otherwise the inheritance of the child followed the usual norms of intestate succession. However, the law of East Gothia insisted that a concubine could never inherit her natural child.⁴³³ The natural child's right to inherit was limited: usually the amount was restricted to a finite sum of money, such as three marks. Some laws, however, like those of Södermanland and West Gothia, did not restrict a natural child's right to inherit its mother, while the paternal inheritance was liable to considerable restrictions. The law of East Gothia awarded the natural child no inheritance rights unless the father gave it something publicly at the provincial assizes or in the king's presence. Moreover, the father's heirs had to give their consent to the gift.⁴³⁴ The Bjärköa law also insisted that if a man had legitimate children, his *frillobarn* inherited nothing unless he awarded it something, whereas if the man was childless, the natural child inherited three marks from him.⁴³⁵ It may be that the insistence on publicity at the assizes and a voluntary donation by the father was an innovation introduced by the Church. Namely, decretists commonly held that a natural child had to be legitimized by a formal act in order to be able to inherit from its father.⁴³⁶ Earlier, some laws had enabled an illegitimate child to prove paternity, despite the father's denial, by successfully undergoing the ordeal of the red-hot iron.⁴³⁷ Swedish medieval law did not distinguish between the children of concubines and other natural children born out of clandestine affairs. Thus, there is no reason to suppose that in medieval Sweden a concubine was taken through prescribed legal forms in order to differentiate the relationship from ordinary liaisons.⁴³⁸

Most Swedish laws, however, did not mention that the natural child's right to inherit was dependent on paternal goodwill. Magnus Eriksson's town law, for instance, awarded the natural child to inherit a maximum of three marks from each parent, unless the total inheritance was less

⁴³³ *MEL*, Ä 16, 63; *KrL*, Ä 18, 57; *HL*, Ä 14:1, 308. Again, the town law was less gender-specific here, allotting half of the natural child's property to its mother, half to its father, *MESL*, Ä 14, 60; *SL 1387*, Ä 14, 26; *UL*, Ä 23:1, 76; *VmL*, Ä 19, 54; *SdmL*, Ä 3:5, 75. Cf. *ÖgL*, Ä 4, 125.

⁴³⁴ *ÖgL*, Ä 4, 125; *DL*, G 9, 80; *SdmL*, Ä 3:5 75; *VmL*, Ä 18:3, 53–54; *VgL I*, Ä 8:2, 77. See also *VgL II*, 26, 275.

⁴³⁵ *Bj.* 28, 465.

⁴³⁶ Brundage, *Law, Sex, and Christian Society*, 300.

⁴³⁷ E.g. *HL*, Ä 16:1, 309.

⁴³⁸ Cf. Warnstedt, "Hertig Magni 'förtidshustrur'," 149; Nors, "Illegitimate," 25.

than six marks and there were legitimate children to inherit.⁴³⁹ The Law of the Realm stipulated that if a natural child's legitimate paternal half-brothers or sisters received six marks or more as their paternal inheritance, the child was entitled to the maximum of three marks all in all, notwithstanding how many illegitimate siblings they had. If the inheritance was smaller than six marks, they received nothing.⁴⁴⁰ Moreover, natural children were entitled to support from both parents. Its mother had to provide for it until weaning or the age of three and the father until the age of seven while both were to take care of it until the age of seven.⁴⁴¹ Even as an adult the illegitimate woman could suffer from the handicap of her birth. If the maiden had been violated, the fine for the offence depended on her birth: the normal forty-mark fine was reduced to half if the seduced maiden was of illegitimate birth. Court records mention the woman's birth as an explanation for a reduction of the fine (*var frjllebarn; sinn pigga oecta*).⁴⁴²

It is possible that 'whorechildren' (*horbarn*) had previously been deprived only of their paternal inheritance, but in the later laws they were categorically ineligible to inherit, neither from their parents nor from anyone else. Their parents could not inherit them, either. According to town law, if an adulterine child did not have children of its own to inherit, its property was to be divided between the town, king, bishop and 'for its soul'.⁴⁴³ The royal laws specifically mention that this group consisted of children begotten in adultery (*i hordom*), between consanguines (*frensemio spiel*), spiritual affines (*guszifuo lagh*) and affines (*syzskene spiel*).⁴⁴⁴ In the older law of West Gothia this concept seems only to have been partially developed. If a couple whose marriage been dissolved

⁴³⁹ *MESL*, Å 14, 14:1, 60; *SL 1387*, Å 14, 28. Cf. Lamberg, "Säädylisyyden var-tijat," 47.

⁴⁴⁰ *HL*, Å 13:6, 307; *SdmL*, Å 3, 74; *MEL*, Å 17, 17:1, 63; *KrL*, Å 19, 19:1, 57. Cf. Warnstedt, "Hertig Magni 'förtidshustrur,'" 149: who thinks that the paternal inheritance was three marks of gold.

⁴⁴¹ *UL*, Å 22:1, 23:1, 74–75; *VmL*, Å 18:4, 54 (father or mother, whoever better affords it, supports after weaning); *HL*, Å 14:1, 307; (father supports after weaning, no maximum age specified). *MEL*, Å 16, 63; *KrL*, Å 18, 57; *MESL*, Å 13, 60; *SL 1387*, Å 13, 27. Cf. Jochens, "The Church," 381: according to Icelandic law, the father answered for the upkeep of the illegitimate child until the age of sixteen.

⁴⁴² *KrL*, G. 3:1, 44. E.g. *Sakresbok för Medelpad 1541–1609*, 31, 79.

⁴⁴³ *VgL I*, Å 8, 77; *VgL II*, Å 10, 271. Cf. *UL*, Å 24:1, 76; *VmL*, Å 18:3, 54; *SdmL*, Å 3:3, 74; *HL*, Å 5, 304; *ÖgL*, Å 13, 130. *MESL*, G 2:3–4, 38–39; *SL 1387*, G 2, 15–16; *MEL*, Å 18, 63; *KrL*, Å 20, 57. See also *JL*, 1.25, 24–25.

⁴⁴⁴ *MESL*, G 2:3–4, 38–39; *SL 1387*, G 2, 15–16; *MEL*, Å 18, 63; *KrL*, Å 20, 57.

by the Church because of an impediment later had children together, they were only categorized as *frillobarn*, instead of *horbarn*.⁴⁴⁵

Unlike the Law of the Realm, town law explicitly included also priests' children (*prestabarn*) among this group.⁴⁴⁶ This was the logical result of the reception of canon law, because, like the other groups of *spuri*, the children of priests and their concubines could not be legitimized by subsequent matrimony. This perception was probably accepted in secular Swedish law in general.⁴⁴⁷ The status of priests' wives or concubines was changing in Sweden in the mid-thirteenth century with the more vigorous insistence of clerical celibacy.⁴⁴⁸ The provincial council of Skänninge, convening under the auspices of the papal legate William of Sabina in 1248, strongly disapproved of the custom of clerical wives or concubines and the ensuing drain on the Church's finances via the inheritance rights of priests' children. The council decreed that already born priests' children by their wives or infants born within a year of the statute could still inherit even if their father died intestate. Children born after the closing date of a year after the statute was issued could only inherit through a will. Nor could a priest, who did not live with a woman, 'acquire' direct heirs by acknowledging paternity after the one-year period had passed.⁴⁴⁹

Although the Church increasingly sought to have people solemnize their marriages *in facie ecclesiae*, in which case the reading of the banns gave some possibilities for prior control, this was hardly sufficient for the Church. Many impediments never surfaced before the wedding, nor was the advance examination always sufficiently thorough. In such situations papal dispensations might remedy the impediment afterwards and legitimize the children.⁴⁵⁰ The reading of the banns has been interpreted as being against the interests of the kin. The public reading of the banns meant that the matrimonial alliance was no longer a private matter of the two kin groups. Anyone could protest against the union, not only

⁴⁴⁵ VgI I, Ä 8:3, 77; VgI II, Ä 12, 271.

⁴⁴⁶ MESL, Ä 15, 61; SL 1387, Ä 15, 28. Cf. GL, 5, 207–208.

⁴⁴⁷ This interpretation is also visible in a seventeenth-century commentary on the 1442 law, *Vår äldsta kommentar*, Ä 18, 39. See also Brundage, *Law, Sex, and Christian Society*, 318.

⁴⁴⁸ 3.10.1213, DS I, doc. 150, 176–177; 3.11.1220, DS I, doc. 187, 210.

⁴⁴⁹ Ljungfors, "Mötet i Skänninge," 4, 9–11, 22.

⁴⁵⁰ Salonen, "Finnish Illegal Marriages," 161–164; Salonen, *The Penitentiary*, 250–277.

the relatives.⁴⁵¹ Surely it suited many couples not to dig too deeply into the family connections or the past (sexual) history of the spouses unless they were common knowledge. Guilds, which were extremely important socially and economically, had much to say in determining whether a dubious marriage was recognized as a legitimate matrimonial union. A person could be awarded some rights in a guild upon or through marriage. If the union was judged to be a non-marital liaison instead of wedlock, this in itself could preclude guild membership. A third point related to guild membership and recognition of marital status was the legitimacy of the children: only legitimate persons could be accepted into the guild or as apprentices.⁴⁵²

The Swedish medieval sources reveal persons using a matronymic instead of a patronymic. This may refer to illegitimate birth or to the fact that the father was unknown. However, it is not possible to identify bastards merely by a lack of patronymics: in fact, most illegitimate children were known by its father's name. Generally, surnames were only rarely used and thus illegitimate children's rights to paternal surnames were not an issue in medieval Sweden.⁴⁵³ Nor is the matronymic always reliable in determining the child's birth status. Some persons using a matronymic may have done so for reasons of recognition: if their fathers had died at an early age, they might be better known in the community through their mothers. Noblemen could adopt their mothers' arms if they were of higher status than their fathers, and these maternal arms would then be transmitted to their heirs. One example of such a nobleman was Johan Kristinsson, who cannot have been an insignificant man judging by the morning gift he gave his wife and by the knights (one of which was called Gisle Elinsson) and squires witnessing the letter.⁴⁵⁴ Other examples of high-ranking persons with matronymics can be found: Håkan Ingeborgsson issued another morning gift letter on behalf of his wife Ingeborg, daughter of *dominus* Ragnvald Ingeborgsson. Not only was the deed witnessed by the king and his two brothers, but also by other *domines*, including two others with matronymics, M. Kristinsson and M. Marinsson. Other late thirteenth-century documents mention *dominus* Nicholas

⁴⁵¹ Mäkelä, *Suvusta perheeseen*, 51.

⁴⁵² E.g. *Skrä-ordningar*, 15, 49, 61, 146, 213, 271; Roper, *The Holy Household*, 19–20.

⁴⁵³ Cf. Nicholas, *The Domestic Life*, 17, 155–156.

⁴⁵⁴ Lamberg, *Dannemännen*, 119; Sawyer – Sawyer, *Medieval Scandinavia*, 185; 2.8.1349, DS VI, doc. 4396, 77.

Sedstredis, possibly a high-ranking cleric of the diocese of Linköping, and Carolus Ingiborgusson.⁴⁵⁵ Many noblemen, even kings, were known probably for the same reason by their matronymics, as was King Svend Estridsen of Denmark, who was of legitimate birth.⁴⁵⁶

In the later Middle Ages noblemen were no longer known by matronymics. This may be an indication of the foothold gained by the Church's tenets concerning illegitimacy: the use of a matronymic would have conveyed the notion of illegitimacy or of uncertain, even unknown paternity. Still, matronymics occasionally appear in the lower estates, as when the widow Ragnild Ingemarsson gave land that she had purchased to her 'son's son' Jöns Agnesson as compensation for her maintenance until her death (*siwting*).⁴⁵⁷ Likewise, Maisa and Birita *Luciadöttrar* inherited their mother in Pellosniemi and Knut Ailinoika was mentioned in Huittinen in 1551.⁴⁵⁸ In such cases, the children may have been illegitimate.

A similar development took place in other fringes of the Catholic world, for example, in Wales with its different perceptions of 'legitimacy'. Rights of illegitimate children were 'becoming a matter for parental choice' or only secondary if one failed to have legitimate heirs. In the Late Middle Ages 'Welsh habits were dying hard; but they were certainly dying'.⁴⁵⁹ Although the Swedish perception of legitimacy and illegitimacy was eventually largely based on canonical distinctions and principles, they never became quite identical. E.g., Swedish law denied a child born of legitimate marriage the capacity to inherit, if one parent was an outlaw. Everyday life often lacked the black-and-white certainties of learned law, and the acceptance or rejection of a marriage by the surrounding society depended on much more than a court's judgement. Admittedly, legitimate birth was usually the precondition for inheritance rights, for instance, but the creation of a new matrimonial unit was more a question of larger societal recognition than the fine points of the law.

⁴⁵⁵ 4.1.1306, *DS II*, doc. 1493, 464–465; the following document (17.1.1306, *DS II*, doc. 1494, 465) deals with the considerable property of Gudmund Ingeborgsson; 21.4.1292, *DS II*, doc. 1067, 140; 26.1.1299, *DS II*, doc. 1267, 284.

⁴⁵⁶ Nors, "Illegitimate," 17, 20.

⁴⁵⁷ *ULD 1490–1494*, 28. See also Lamberg, *Dannemännen*, 119.

⁴⁵⁸ Pellosniemi, 18.7.1564, *SVT I*, 206; Huittinen, 17.2.1551 and 5.8.1551, *SVT II*, 77, 111.

⁴⁵⁹ Davies, "The Status of Women," 108.

Children in the Swedish Marriage Process

It has been argued that most women who gave birth to illegitimate children had expected to get married.⁴⁶⁰ In fact, fornication has been occasionally perceived as 'an integral part of the process by which marriages or other stable unions came to be formed'.⁴⁶¹ Society also allowed more freedom to seriously courting couples in the tacit understanding that they would make up their minds about possible marriage or break up. As a consequence of this, however, there was only 'a narrow dividing line between bridal pregnancy and bastardy'.⁴⁶² Thus the birth of an illegitimate child would be a frustration of marital expectations due to lack of means of pressure or some disturbance in the marriage process, such as death, the discovery of an impediment or mere desertion made easier by growing mobility. According to Laslett, interruptions in the long marriage process that permitted the parties to have sexual relations between the initiation of the process and the actual wedding ceremony partly explain bastardy. Similar conclusions have been reached regarding colonial Spanish America.⁴⁶³ On the other hand, it has been suggested that a lack of kin- and friend-support in the middle and final stages of courtship may have landed some mothers of illegitimate children 'in a comparatively weak position when it came to pushing for a marriage or an acceptable degree of compensation.' Illegitimacy and failed courtship was not caused by deficient family backing even if it may have made some women more exposed to the risks involved in prenuptial intimacy.⁴⁶⁴

As discussed above, the status of the children born to a betrothed couple was quite clear in Swedish law. Although the couple never married, 'betrothal children' were in all respects legitimate and inherited accordingly. The Church managed to curtail this rule by insisting that in case of an impediment between the couple, only marriage *in facie ecclesiae* protected the legitimacy of the child through the doctrine of putative children.⁴⁶⁵ The legitimacy of children born to betrothed couples was also accepted in the other Scandinavian kingdoms. However, due to the Church's efforts, the Norwegian laws limited this notion: as

⁴⁶⁰ Twinam, *Public Lives*, 9.

⁴⁶¹ Finch, "Sexual Relations," 252. See also *ibid.*, 255.

⁴⁶² Ingram, *Church Courts*, 230, 267–268.

⁴⁶³ Laslett, "Introduction," 8; Twinam, *Public Lives*, 39, 74.

⁴⁶⁴ Frances, "Making Marriages," 49–52.

⁴⁶⁵ X 4.17.2, X 4.17.11, X 4.17.14.

the interval between betrothal and wedding was to be twelve months at most, a child conceived by the engaged couple during this period alone was considered legitimate. Despite the omission of this section in subsequent law, in a late thirteenth-century Norwegian statute, the publication of the betrothal from the pulpit was the precondition of legitimacy of 'betrothal children'.⁴⁶⁶

The Swedish Church did not attempt to abolish the rule of legitimacy of 'betrothal children'. Cases involving their status surfaced now and again in court records, usually in the context of an inheritance dispute in which the heir-claimant insisted on another's illegitimacy in order to have the inheritance for himself. In other cases, where there does not seem to have been an opposing party, the entry is declarative and states the known facts. Sometimes the cases involved close relatives. Per the Taylor tried to get his son's inheritance for himself through the argument that, although his son had married Ingeborg, they had not been joined together by a priest. Despite this claim, Ingeborg and her child were awarded the inheritance because they had been betrothed in accordance with the secular law.⁴⁶⁷ However, if it could be proven that the groom had been elsewhere many months before and after the supposed conception had taken place and had not visited his fiancé publicly or secretly, his paternity could be denied.⁴⁶⁸

The enforcement of the canonical marriage regulations and strict definitions of legitimacy made it worthwhile for potential heirs to posthumously challenge the validity of marriages in order to disinherit the children on grounds of illegitimacy. Hence, it was in the interests of heirs to have the validity of their parents' marriage and their legitimacy ratified as soon as rumours claiming the contrary started to circulate. This is obviously the motivation behind the declaration of Bishop Arvid Kurck of Turku and his chapter from 1515. The validity of the matrimony of Anna Hansdotter (Tott) and Klemet Hogenskild was pronounced, and their daughter, Anna Klemetsdotter Hogenskild was declared legitimate and able to inherit. Obviously the union had been contracted in January 1512 and it ended less than a year later through Klemet Hogenskild's death in December 1512. His posthumous

⁴⁶⁶ Lagus, *Om oäkta barns rättsförhållande*, 34–35, 97.

⁴⁶⁷ ULA, Dalarnas dombok, 15.2.1557, 252.

⁴⁶⁸ Questions of Regimentrådet 1540–1542, 125–126.

daughter Anna was born a month after her father's death.⁴⁶⁹ Possibly the combination of the short duration of the marriage and the posthumous birth of the daughter had inspired talk that no valid wedding had ever taken place.

Swedish inheritance disputes occasionally invoked the illegitimacy of the heir(s), usually the children. In some cases the quarrels could go on for years and, despite judgements, were repeatedly taken up at ecclesiastical and secular courts. One of the most famous of these disputes revolved around the question of whether or not the nobleman Nanne Kärling had in fact taken monastic vows or not. Kärling had evidently been forced to enter a monastery against his own wishes so that he could be deprived of his inheritance portion.⁴⁷⁰ His sister and brother-in-law claimed that he had taken monastic vows, making his subsequent marriage to Kristina Kristiernsdotter mere concubinage and their son Nanne Nannesson a bastard. The case was heard in several different courts in Rome and Sweden between 1450 and 1476, although several bishops and the pope had already decided for Nanne Kärling.⁴⁷¹

In another case from 1403 the son of the nobleman Birger Trolle petitioned that he be given evidence of his legitimate birth over thirty years after his father's first marriage had been annulled because of affinity and spiritual kinship. He was prompted by concerns for his paternal and maternal inheritance, as he was being calumniated as the fruit of an illicit union. The investigation, which was performed by Canon Tord Andreae at the instigation of Bishop Nicolaus Marci of Linköping, established that an annulment had taken place in about 1369. After this, Trolle had remarried and produced at least one son, who now over thirty years later had to defend himself against claims of illegitimacy, possibly partially because his father's second marriage had been clandestine.⁴⁷² These two cases, that of Nanne Kärling and Birger Trolle, though surely unusual in their length and persistence, would indicate that if considerable property interests were at stake and the parties were powerful enough, inheritance cases alleging

⁴⁶⁹ 25.2.1515, *FMU VII*, doc. 5793, 357–358; Ödberg, “Om Hogenskild Bielkes moder,” 6–7.

⁴⁷⁰ See also e.g. *Decretales ineditae saeculi XII*, 19–20.

⁴⁷¹ Nordmark, “Nanne Kärling,” 134–151; Hockman et al., “Karanneen munkin tarina”; Salonen, “Fallet Nanne Kärling”.

⁴⁷² *SD I*, doc. 372, 282–283; *SD I* doc. 384, 292–293. See also X 4.17.8.

disputed marriages and illegitimate birth could drag on for years on end despite papal judgements in the case. This observation corresponds with the circumstances surrounding some late medieval Icelandic cases in which papal marriage dispensations were disregarded and the children deprived of their inheritance.⁴⁷³

The Church's dogma of legitimate birth was reinforced by the special protection awarded to children born of a properly solemnized union *in facie ecclesiae*. As discussed above, if the reading of the banns and the publicity of the wedding had not managed to unearth an impediment, such as consanguinity or affinity, a presumption of legitimacy existed that the Church was ready to protect. Couples conforming to the ecclesiastical norms were rewarded: their union was awarded the status of putative marriage (*matrimonium putativum*). Peter Lombard's main principles of putative marriages were valid in such cases. If a couple had solemnized their union with the reading of the banns *in conspectu ecclesiae* and only later learned of an impediment between them because of which their marriage was annulled by an ecclesiastical judge, the crime was excused by their ignorance. Because of the ecclesiastical involvement and their good faith (*bona fide*) they were to be considered *quasi conjugium*, and their children, born or conceived before the annulment of the marriage, were to be considered legitimate.⁴⁷⁴

This opinion was enforced in the decretals of Pope Alexander III and Celestine III, with later confirmation in the statutes of the Fourth Lateran Council. The doctrine came to be known and enforced in Scandinavia.⁴⁷⁵ Some canonists were reluctant to grant full rights to children born of clandestine unions: these were legitimate in regard to their right to inherit and to appear in secular courts, while they were to be regarded illegitimate in regard to their right to hold ecclesiastical office and to appear in ecclesiastical courts.⁴⁷⁶ A papal decretal, however, held that the children of clandestine marriages that had been proven and ratified by the Church were to be judged legitimate.⁴⁷⁷ Although illegitimacy might be perceived as a punishment, the outcome was unclear when only one parent had been ignorant and the other had known of the impediment. Many canonists and even later practice preferred to

⁴⁷³ Arnórsdóttir, "Icelandic Marriage Dispensations," 162–169.

⁴⁷⁴ Freisen, *Geschichte*, 858–859.

⁴⁷⁵ X 4.17.2 and X 4.9.11. See also Holtan, *Ekteskap*, 14–15.

⁴⁷⁶ Freisen, *Geschichte*, 81.

⁴⁷⁷ X 4.17.9.

have legitimacy prevail in such cases, because one could not be half legitimate, half illegitimate. Moreover, Pope Innocent III accepted the interpretation in favour of legitimacy.⁴⁷⁸ During his visitation in 1540 the first Protestant Danish Bishop of Seeland, Peder Palladius, justified the necessity of solemnization by referring to the status of children. If someone called a child a 'whorechild' after the parents' death, how could the legitimate birth be proven when all those who had been present were dead? But if the couple had been solemnized in church, then young children who attended the wedding could then testify about the legitimacy of the marriage and children even one hundred years later. Thus, in former times solemnization had been established for the benefit of married couples and their children.⁴⁷⁹ Undoubtedly, this explanation followed the tradition of canon law.

In Sweden, where secular law, in accordance with canon law, acknowledged children born to engaged couples as legitimate, the matter was simple. Children were legitimate although the marriage process had never completed for one reason or another. Karl Lehmann has suggested that prior to any ecclesiastical influence on old Scandinavian laws the children born to betrothed couples would not have been legitimate, and that this legal rule was a reception of the canonical principle of *matrimonium praesumptum*, based on intercourse after future-tense vows.⁴⁸⁰ His reasoning is open to criticism, but the scarcity of the early medieval material does not allow us to resolve the matter one way or another. The principle that 'betrothal children' were legitimate was upheld after the Reformation, provided that the betrothal or trothplight was formal and lawful (*festligh och laghlig*).⁴⁸¹

When the prevalence of inheritance disputes is viewed against the background, it is not surprising that even ordinary people tried to resort to claims of invalid matrimony and illegitimacy in inheritance disputes although the outcome would seem obvious. In a rather dramatic and complex inheritance dispute going back many generations, Erik Olsson and his co-heirs were able to prove that Erik the Tailor, who was their cousin (mother's sister's son), had been of legitimate descent and was entitled to the inheritance after his grandparents although they had not solemnized their marriage. Erik Olsson had had it confirmed by

⁴⁷⁸ Freisen, *Geschichte*, 859–860; X 4.17.14.

⁴⁷⁹ Nelleman, "Retshistoriske Bemærkninger," 385.

⁴⁸⁰ Lehmann, *Verlobung*, 98–105.

⁴⁸¹ *KO 1571*, Om åtskildnat j echenskap, 126–127; VDA, VDP A I:1, 7v.

the archbishop and chapter of Uppsala that Erik the Tailor's maternal grandmother had been legitimately married to her husband Udvester. They had been trothplighted, she was called his '*trolloffuedhe hustru*' and they had had two daughters during their four-year cohabitation. At this stage they had started to prepare for a wedding, inviting wedding guests and preparing the food for the feast, but fate intervened: Udvester had been killed on the Thursday before the wedding.⁴⁸²

In some cases the 'common people and the jury' testified about the birth status of the person, as in a case in which the people of Njurunda testified that Kerstin Larsdotter whose half-brother Jöns Grelsson tried to get the maternal inheritance all for himself was in fact a 'betrothal child', not illegitimate. Moreover, when their mother had died, there had been no talk of illegitimacy until now. The matter was referred to the consistory for further investigation.⁴⁸³ In another case the Uppsala chapter confirmed the legitimate birth of Olof Andersson of Söderstad in Hälsingland, who had a letter proving that his late mother had been lawfully trothplighted with his father. Likewise, Erik Mattsson asked the chapter whether his wife's child with her previous husband was legitimate and entitled to inherit (*ächta och arftagande*). The child was, namely, posthumous and its parents had 'only been lawfully trothplighted' as the local priest testified in his letter. The chapter noted that according to the Church Ordinance the child was legitimate, but that inheritance issues pertained to the secular court.⁴⁸⁴ Jon Månsson requested the cathedral chapter of Uppsala to confirm the illegitimacy of the late Michil Persson's grandson. However, the weight of the evidence for the legitimacy was crushing. Michil Person had testified before his death in the presence of three men that he had betrothed their serving maid to his son according to the law. Moreover, while still in good health he had obtained a judgement confirming his grandson's legitimacy from the archbishop and the king.⁴⁸⁵ Therefore, Jon Månsson's claim before the ecclesiastical courts would seem a last desperate attempt to lay his hands on an inheritance to which he would have been the closest heir in lack of a legitimate heir. Moreover, the case also emphasized the father's consent to his son's marriage.

⁴⁸² 9.3.1586, *Upplands lagmansdombok 1581 och 1586*, 178–179. See also VDA, VDP A I:1, 16.8.1598, 57; VDA, VDP A I:1, 58.

⁴⁸³ *Tingsprotokoll för Njurunda*, 180; Taussi Sjöberg, *Rätten*, 60.

⁴⁸⁴ ULA, UDP, 23.4.1600, 174v; ULA UDP, 19.5.1600, 175v.

⁴⁸⁵ ULA, UDP, 6.2.1596, 108.

But the crux of the matter was whether or not the couple was to be considered legally betrothed or trothplighted. In an inheritance dispute from 1600 the town court of Stockholm denied against the inheritance rights of a child born from an alleged engagement and awarded the property of the deceased Anders Wimtzt to his siblings. Lars Trulsson, the former clerk at Stockholm Castle, was representing his stepdaughter, who had given birth to Anders's child. This child, he claimed, was entitled to the inheritance as his father's legitimate child and heir, its parents having been trothplighted. Lars Trulsson presented to the court a letter of intent, given by Anders to his stepdaughter, in which Anders had declared that if he married another woman than her, all the worldly and spiritual goods that God would give him would be cursed. The court could not accept this mutual 'secret obligation and commitment' as valid matrimony, but any party dissatisfied with the verdict was referred to the chapter of Stockholm or Uppsala.⁴⁸⁶

In some cases, however, the assizes confirmed cases of dubious legitimacy, which obviously corresponded with secular notions of marriage formation, legitimacy and fairness. In the case of the footsoldier Erik Olsson, who had fornicated with Sigrid Eriksdotter, considered illegitimate, agreed to marry her if she could prove that she was of legitimate birth and thus capable of inheriting property. Consequently, five men testified that Sigrid's father, Erik Jonsson had given her mother, Karin, the 'trothplighting gifts' in the presence of respectable people, but because of the impediment of consanguinity in the fourth degree, the local priest had refused to acknowledge the trothplight as valid. Erik had then gone to war against Russia for some years and had died abroad. While he was alive, though, he had admitted to his fellow soldiers that he had trothplighted Karin and wished to legitimate by marriage (*ächta*) both mother and child. Karin had remarried and subsequently she and her husband had not looked after Sigrid's best interests and inheritance rights, but the assizes confirmed the validity of the trothplight and Sigrid's legitimacy and inheritance rights.⁴⁸⁷ Judging by late sixteenth- and early seventeenth-century chapter practice, a dispensation of consanguinity in the fourth degree might well have been received, and the flexibility of the court must perhaps be seen against this background. Yet, the sixteenth-century case material suggests

⁴⁸⁶ 26.5.1600, *SST från år 1592 III*, 64–65.

⁴⁸⁷ *Tingsprotokoll för Njurunda*, 44–45.

that ecclesiastical solemnization was given an increasing value as a necessary factor of marriage although secular law acknowledged the status of 'betrothal children' as legitimate in every respect.

3.6 *Summary*

After Christianization, which in the most peripheral areas of the Swedish realm was not even completed by the Late Middle Ages, the Church managed relatively painlessly to have matrimony accepted as part of its jurisdiction. While secular courts could claim matters related to matrimonial property and disciplinary aspects, e.g. discordant couples threatening the peace of the community, causes relating to the creation of the conjugal bond and legitimacy were entirely in within the competence of the Church. This may seem strange considering that marriage formation was largely regulated in the secular law books. The Church managed to modify Swedish marriage formation to the extent that no clear contradictions existed: its notions of indissolubility and incest were largely abided by. In matrimonial disputes and causes revolving around legitimacy or illegitimacy, ecclesiastical jurisdiction had been recognized. Freedom of choice was advanced by preventing forced marriages and insisting that the woman be present at the ceremony. Solemnization *in conspectu ecclesiae*, with the banns read and the blessing performed by the own parish priest, became more and more frequent. The Church also managed to disinherit illegitimate children and to categorize them in accordance with its doctrine into two subgroups, depending on their parents' capacity to marry each other lawfully.

From the late twelfth century on the Church started to emphasize that the sacrament of marriage was a matter that concerned the bridal couple alone, and parental consent, though recommendable, was redundant. By the exchange of their mutual consent the couple administered the sacrament of matrimony to themselves. In Scandinavia in general, and more particularly Sweden, the Church thus directly opposed the notions of the secular society and kin structures. As discussed above, the Church was successful in championing individual consent, but the secular society clung to the powers of the legal guardian. But, it will not do to disparage the revolutionary potential of the Church's tenet of the free consent of the principals, which could and occasionally came in conflict with the time-honoured tradition of parental assent. Canonical jurisprudence even toyed with the thought of pronouncing

all secular pecuniary sanctions for wayward children, who exercised their right to choose, to be in violation of the freedom of marriage. Some hesitant steps were taken in that direction, but the Church did not pursue the notion to its logical end. It was not in the interests of the Church to upset existing hierarchies, and children were taught to respect and obey their parents. As discussed above, in practice obtaining the consent of the principals and their parents need not be perceived as a potentially disrupting, but rather as a supplementary measure, but if the two ended up on a collision course, the Church chose to enforce the wishes of the children, not of their parents. Here the Church in Sweden forced through its programme, which clearly broke away from both the Roman and Germanic legal traditions. In Sweden the threat of disinheritance applied only to those daughters who married or fornicated without the consent of their parents.

It has been suggested that Swedish law was conservative with regard to the legal capacities and legal majority of women. Indeed, it can be—and has been—said that the Church did not press particularly hard for the necessity of obtaining the woman's consent in medieval Sweden.⁴⁸⁸ The woman's marriage guardian retained his active role in the ceremony in giving the woman away to the groom, while secular law provided sanctions to persons who usurped the *giftoman's* position and role. Taken in connection to the restrictions of the legal capacities of widows and the exclusion of women as marriage guardians in the Laws of the Realm discussed above, it would seem that the commission drafting Magnus Eriksson's Law of the Realm hardly used the opportunity to compile a law that completely freed women from the restraints of guardianship. Rather, it attempted to safeguard patriarchal control of women against the contrary tendencies championed by the Church. Even if Swedish fathers could lose control of their daughters' persons, they still retained means of controlling the family wealth.

Although there is not enough evidence to prove or disprove whether the Church's dogma of consent really had the potential to upset the patriarchal order of the Swedish heads of families, it is obvious that they felt threatened by it. Swedish law only presupposed that the bride was passively present and did not explicitly object. Unlike Norwegian, Danish or Icelandic medieval law, Swedish law failed to guarantee by active means a daughter's freedom to choose. Many Continental

⁴⁸⁸ Jacobsen, "Sexual Irregularities," 72; Sjöholm, *Sveriges medeltidslagar*, 118–119.

laws awarded daughters and sons who had reached the age of legal majority the right to choose for themselves; such paragraphs were even included in certain Nordic laws. To complete the picture, Swedish law provided no positive legal recourse to women whose legal guardians refused to arrange a suitable match for them in order to control their inheritances. In this regard the Church did not essentially mitigate the sway of Swedish patriarchalism.

The secular legal tradition led the way in placing the primary emphasis on the betrothal; the Church's legal authority followed, although with no great precision. 'Church doctrine attempted to accommodate itself to the practice, but the accommodation was never total'.⁴⁸⁹ The secular betrothal had come to fulfil the Church's minimum requirements when the presence of the woman was made a condition for a valid betrothal.⁴⁹⁰ The Church had obtained the right to break betrothals, usually on the initiative of one or both of the parties. It seems that through the payment of a fine, a betrothal could be broken even unilaterally. Naturally, the Church could also investigate the validity of a betrothal on its own initiative if it was suspected that an impediment existed between the parties. In contrast, the medieval Swedish Church respected the freedom of choice in breaking betrothals and trothplights. Any reason was accepted as grounds for disrupting the initiated bond in episcopal practice, provided the engagement had not been followed up by consummation. Nevertheless, if a party did not have an acceptable reason for the refusal to honour his/her promise, (s)he was prescribed penance for breaking the oath and made to pay a fine.

Control went hand in hand with knowledge, which is why clandestine matrimony, as the Swedish marriage process was perceived in the eyes of the Church, undermined the ecclesiastical duty to ensure that there were no impediments of marriage. Publicity in form of the reading of banns was therefore the preferred means of ensuring that silence could not provide shelter for unlawful unions. Apart from the general problem that many laymen persisted in secular betrothal and marriage customs without seeking priestly assistance, migration and vagrancy constituted additional threats to publicity and control. In order to counter the problem caused by mobility, the medieval Swedish Church repeatedly insisted that the priest marry only those strangers, who could produce

⁴⁸⁹ Gottlieb, "The Meaning of Clandestine Marriage," 72.

⁴⁹⁰ See also Hall, *The Arnolfini Betrothal*, 67–68.

evidence that there was nothing to impede the marriage. Ecclesiastical censure, the minor ban, was also to be used to turn away suspicious newcomers until they proved their marriage.

Despite the relative success of the Swedish Church's ongoing campaign to increase the popularity of solemnization *ad januas ecclesiae* in medieval Sweden, it became evident that the results were insufficient. Although the Church accepted the secular betrothal, by the end of the Middle Ages this approval had become strained, even slightly tinged with hostility.⁴⁹¹ This strategy seems to have a parallel in late-medieval Poland, where the Church was relentlessly opposed to certain secular marriage customs while making concessions to others.⁴⁹² Also in Orthodox Russia it took centuries for the Church to impose ecclesiastical solemnization as a compulsory element in marriage formation. At first, the prevailing custom, involving the public transfer of the bride and her property to the husband's house with family consent, was accepted. In the later Middle Ages the popular custom was disapproved and condemned, while by the sixteenth century marriage without solemnization was denounced as illegal. Later the offspring of such unions were denied all inheritance rights. In fact, the control of betrothals was seen as a means to eliminate unsolemnized 'common law' marriages, which is why betrothals were to be performed in church rather than in private homes.⁴⁹³

In the Late Middle Ages the betrothal, the crucial part of the Swedish marriage process, was in still the hands of the laity. By the late fifteenth century it was evident that more effective means of controlling the formation of nuptial couples was required. All *desponsaciones*, whether *de praesenti* or *de futuro*, had to be transferred over into ecclesiastical hands. The available evidence leads one to assume that nearly all marriages were initiated by an engagement or betrothal. As couples often began to cohabit directly or after the wedding at the latest, delayed solemnization preceded by the banns did not prevent bigamy or incest. This rise of the trothplight partly as an addition to, partly as a substitute for betrothal, was a double-edged sword for women. The growing ecclesiastical individualistic influence on Swedish society at large, and on the marriage process more particularly, enhanced their consent, independence and

⁴⁹¹ Carlsson, *Jag giver dig min dotter*, II, 110.

⁴⁹² Brozyna, *Ecclesiastical Courts*.

⁴⁹³ Levin, *Sex and Society*, 83–87, 94.

liability. Nevertheless, the formless and private exchange of consent that the Church acknowledged as a valid marriage liberated individuals from both the control and the protection afforded by kin. As elsewhere in Europe, the possibility of formless private exchanges were used by young lovers to escape from the pressure of their families, but at the same time it exposed them to being duped by fortune-hunters with an eye on their property or lecherers with an eye on sex with no strings. Thus the formalities and legal guardianship of unmarried females both protected and restricted women.

It is obvious that the Church's unrelenting policy of emphasizing the role of the ecclesiastical solemnization of matrimony had its effects on the way people understood the marriage process. The ceremony *in facie ecclesiae* was beginning to be seen as a normal, even indispensable, part of getting married. Some Swedish researchers have seen the Reformation, with its emphasis on marriage, to have caused the weak position of illegitimate children, although the definition of legitimate children was rather liberal.⁴⁹⁴ This, however, is a false assumption. Originally, medieval Swedish law did not categorize children as 'legitimate' or 'illegitimate'. Nevertheless, during the Middle Ages, the Swedish perceptions of legitimacy were largely adapted to the canonical division of *legitimus*, *naturalis* and *spurius*. The legal notions changed very little in the sixteenth and seventeenth century and then the major change was the extinction of the special category of priests' children, as the clergy was allowed to marry after the Reformation. Despite the considerable success of the Church in redefining the status of children, the Swedish notions of legitimacy did not become identical with those of the Church.⁴⁹⁵ Rather, their status was determined according to their capacity to inherit. Similarly in Iceland, if old men past eighty or feeble-minded men married without permission from their kin, all children born of such marriages were unable to inherit.⁴⁹⁶ Thus, the ecclesiastical and secular definitions of legitimacy as expressed by possessing full inheritance rights did not become identical in medieval Scandinavia.

⁴⁹⁴ Lindstedt Cronberg, *Synd och skam*, 75.

⁴⁹⁵ Yet, by introducing legitimation by subsequent marriage, dispensating clerics of the impediment of illegitimacy and improving the possibilities of child support, the Church helped improve the position of illegitimates, Kuehn, *Illegitimacy*, 18.

⁴⁹⁶ Jochens, *Women*, 22.

Yet, although the Lutheran Church put increasing pressure on the Swedish marriage process after the Reformation by emphasizing the ecclesiastical rituals, the marriage process was fixed to the bedrock of the Swedish medieval laws and custom and thus found its chief institutional support in them. In addition, the societal functions of the marriage process by no means disappeared with the waning of the Middle Ages and the introduction of the Reformation in Sweden. The sixteenth-century sources, which are far more abundant than the medieval ones, give us a better insight into the post-Reformation development of the Swedish marriage process.

CHAPTER FOUR

ECCLESIASTICAL CONTROL VS. TRADITIONAL MARRIAGE FORMATION IN REFORMATION SWEDEN

4.1 *The Reformation and Matrimonial Law*

The Reformation and Marriage

An increasing wave of criticism was surging against the Catholic marriage dogma in the early sixteenth century. The comments of such famous contemporaries as the humanist Erasmus of Rotterdam (1469–1536) revolved largely around the issue of consent. The main complaints were the following. The Church traditionally disparaged matrimony by preferring cloistered virginity to married life, but hypocritically the clergy fell short of its own standards, being celibate in name only. Second, the Church failed to guarantee parental power over children's marriages and instead allowed clandestine matrimony, resulting in misalliance and shame. The marriage impediments were a complex and artificial web from which one could disentangle oneself for a suitable fee.¹ But where most other critics had mainly blamed the negligence of authority and moral laxity of society for the decay of the estate of marriage, Martin Luther (1483–1546) and his adherents accused the Catholic Church more directly as an institution. The Catholic theology of matrimony and canon law were in their firing line.²

Indeed, all of these accusations had some foundations in real life. It is obvious that many of the clergy were regularly breaking their vow of celibacy to which the upper clergy had turned a blind eye and which had been turned more or less into a source of profit. In addition, the secular clergy, monks and nuns were occasionally involved in sex scandals that easily tainted the whole estate. Clerics were suspected of 'sparing no respectable man's wife or child'.³ In their efforts to raise the status and

¹ Wendel, *Le mariage*, 37–40; Ozment, *When Fathers Ruled*, 1–8; Lindberg, *The European Reformations*, 97–98; Harrington, *Reordering marriage*, 27–38.

² Martin Luther, "The Babylonian Captivity of the Church" [1520], 96. Witte, *Law and Protestantism*, 215–216.

³ E.g. Brady, *Communities, Politics, and Reformation*, 235–236.

sanctity of both matrimony and the priesthood, the Reformers chose a solution that has been characterized as ‘dramatically simple, though not a little ironic’, namely, the desacramentalization of both.⁴ Martin Luther announced that matrimony was regarded as a sacrament without any scriptural basis. Marriage was a mystery, a great and secret thing, a divinely ordained way of life, but not a sacrament.⁵ This was soon echoed by other Reformers, including Ulrich Zwingli (1484–1531).⁶

Luther also attacked the Catholic Church’s prioritizing of virginity at the expense of matrimony as the estate of marriage had been created for all people as a remedy for immorality. Luther considered it certain that those refusing to marry must fall into sexual sin. Only some exalted few, ‘a special miracle of God’, could remain chaste and unmarried in addition to those persons, who, owing to some physical weakness, were unable to fulfil their marital duties. Philipp Melancthon (1497–1560), expressing himself in language more legal, agreed: the union of man and woman was a natural and divine right (*ius naturale; ius divinum*).⁷ Clerics, monks and nuns were all bound to follow the Divine commandment to be fruitful and multiply, forsaking their vows. Luther, an Augustine monk himself, renounced the vow of celibacy as a human invention on the basis of Scriptural examples, thus denying clerical status as a valid impediment to marriage.⁸ Monks and priest especially in Wittenberg had been defiantly breaking their vows of celibacy by public weddings since 1521. Other towns followed suit.⁹ In the early 1520s, reform-spirited Germans were ‘rescuing’ nuns from monasteries, e.g. the escape of Katharina von Bora and eleven other nuns from a Saxon nunnery at Nimbschen.¹⁰ This enthusiasm to ‘repatriate’ kinswomen, however, has partly been attributed to religious zeal but equally

⁴ Harrington, *Reordering marriage*, 61, 65, 84.

⁵ Martin Luther, “The Babylonian Captivity of the Church” [1520], 92–96; Läh-teenmäki, *Sexus und Ehe*, 25–27; Harrington, *Reordering marriage*, 65–67.

⁶ Safley, “To Preserve the Marital State,” 164; Witte, *Law and Protestantism*, 226–228.

⁷ Martin Luther, “The Estate of Marriage” [1522], 18–22, 43–45; Läh-teenmäki, *Sexus und Ehe*, 34–41; Safley, “To Preserve the Marital State,” 164–165; Witte, *Law and Protestantism*, 217–218, 222–224, 241; Harrington, *Reordering marriage*, 62–64, 67–71.

⁸ Martin Luther, “The Estate of Marriage” [1522], 18–22, 28, 45; Martin Luther, “The Babylonian Captivity of the Church” [1520], 101–102; Läh-teenmäki, *Sexus und Ehe*, 28–32.

⁹ Lindberg, *The European Reformations*, 97–101, 172–173; Brady, *Communities, Politics, and Reformation*, 236–246, 249.

¹⁰ Özment, *When Fathers Ruled*, 16–25; Brady, *Communities, Politics, and Reformation*, 228–234.

to a strengthening of the patriarchal household's rights over women, 'domesticating' them.¹¹

Being instituted by God, matrimony was a 'weighty matter in the sight of God', and thus not to be entered into wantonly or lustfully. Rather, those wishing to marry ought to pray earnestly to God for a spouse.¹² The Reformers abandoned the Augustine goods of marriage (*fides, proles, sacramentum*) replacing them by love, procreation and protection: mutual love and support between the spouses, begetting and nurturing of children and the mutual protection from sexual sins.¹³ But matrimony not only benefited the individual in every way, countries and cities also profited from it, as God would not punish them with plagues for their immorality.¹⁴ Indeed, matrimony as the basis of all social order was both a private and a public institution. All 'orders of human society' were derived from this God-instituted coupling of man and woman.¹⁵ Luther spoke for marital companionship for which the woman had been created to bear children and be her husband's helpmate in all things. The desires of the flesh were wicked outside matrimony but in it they were a conjugal obligation. Married love was the greatest and purest of all types of love, as it sought only the spouse. Although conjugal intercourse was permitted for other reasons than for begetting children, men were to control themselves so as not to make 'a filthy sow's sty' of their marriages.¹⁶

In general, the Reformers favoured the simplification of the Catholic lists of marital impediments. In addition to their abdition of the impediment of religious vows, the Reformers denounced especially the impediment of spiritual kinship created by baptism or confirmation as fictitious and unscriptural.¹⁷ As for the forbidden degrees of kinship, Luther's earlier works adhered to the list of forbidden relatives given

¹¹ Brady, *Communities, Politics, and Reformation*, 234.

¹² Luther, Martin. "A Sermon on the Estate of Marriage" [1519], 8.

¹³ Witte, *Law and Protestantism*, 218–224.

¹⁴ Martin Luther, "The Estate of Marriage" [1522], 44.

¹⁵ Witte, *Law and Protestantism*, 230–231.

¹⁶ Luther, Martin. "A Sermon on the Estate of Marriage" [1519], 7–11; Lähteenmäki, *Sexus und Ehe*, 49–60; Witte, *Law and Protestantism*, 219–221.

¹⁷ Martin Luther, "The Babylonian Captivity of the Church" [1520], 99–100; Martin Luther, "The Persons Related By Consanguinity and Affinity Who Are Forbidden to Marry According to the Scriptures, Leviticus 18" [1522], 8; Martin Luther, "The Estate of Marriage" [1522], 24. See also Dieterich, *Das protestantische Eherecht*, 97–101, 132–137, 158–162, 214–228.

in Leviticus 18. The rest had been forbidden ‘for the sake of money’.¹⁸ Later in his career, however, as in his *Von den Ehesachen* (On Marriage Matters, 1530) Luther was more careful with his words: he advised to leave the impediment of kinship and the forbidden degrees to the secular laws and jurists. He saw no objections to remaining in the traditional canonical practice of prohibiting marriage until the fifth degree.¹⁹

The changes in the status of marriage from an indissoluble sacrament to a holy thing also opened the door to divorce, which indeed had Biblical precedents. Luther failed to distinguish clearly between annulment and divorce, but he generally allowed dissolution of marriage on grounds of adultery, malicious abandonment, antecedent impotence and possibly also malicious refusal to pay the conjugal debt.²⁰ Moreover, dissolution was permitted in certain cases of error, provided the innocent party had been in ignorance of the antecedent condition of the other.²¹ Although the grounds for divorce came to vary from one Protestant territory to another, divorce became generally accepted and available in the courts. England is the most notable exception to this rule, as divorce was only available there by an act of Parliament until the nineteenth century.²²

The Lutheran Reformation and Marriage in Sweden

Sweden was the first independent realm outside the German principalities breaking definitely with the papacy and outwardly embracing evangelical notions quickly, in less than a decade. However, the internal

¹⁸ Martin Luther, “The Babylonian Captivity of the Church” [1520], 99; Martin Luther, “The Persons Related By Consanguinity and Affinity Who Are Forbidden to Marry According to the Scriptures, Leviticus 18” [1522], 7–8; Martin Luther, “The Estate of Marriage” [1522], 22–24.

¹⁹ Martin Luther, “On Marriage Matters” [1530], 315–316. See also Harrington, *Reordering marriage*, 85–86.

²⁰ Martin Luther, “The Babylonian Captivity of the Church” [1520], 103–106; Martin Luther, “The Estate of Marriage” [1522], 30–35; Martin Luther, “On Marriage Matters” [1530], 300, 311–315; Lähteenmäki, *Sexus und Ehe*, 70–86; Ozment, *When Fathers Ruled*, 85–98; Harrington, *Reordering marriage*, 87–91.

²¹ Martin Luther, “On Marriage Matters” [1530], 302–303. For other Protestant notions, see Friedberg, *Das Recht der Eheschliessung*, 227; Dieterich, *Das protestantische Eherecht*, 127, 129, 206; Witte, “Zwischen Sakrament und Vertrag,” 405, 407; Witte, *Law and Protestantism*, 242–243.

²² E.g. Wendel, *Le mariage*, 152–164; Dieterich, *Das protestantische Eherecht*, 103–108, 142–146, 163–166, 234–245; Safley, *Let No Man Put Asunder*, 33–37, 130–143; Witte, “Zwischen Sakrament und Vertrag,” 408–409, 427–436; Witte, *Law and Protestantism*, 246–252; Ingram, *Church Courts*, 146–147; Stone, *Road to Divorce*, esp. ch. 12.

re-establishment of the Church, once reformed, took about seventy years to accomplish.²³ In Sweden the onset of the Reformation coincided with the struggle against Danish dominance and supremacy causing the nobility and people to unite behind Gustav Vasa, whose success was literally crowned by his accession to the Swedish throne. The changes of dynasty and religion coincided, but at first his religious policy balanced on a tightrope between Catholicism and Lutheranism.²⁴ Against this political background, it is natural that the Reformation gained earlier foothold in Sweden than its archenemy and neighbour Denmark.

The Swedish Reformation having been instigated from above, the Swedish Reformers were neither numerous nor original. Some of them had studied in Germany, when what was first known as the Lutheran heresy became known. Olaus Petri (1493–1552) studied theology and law in Wittenberg in 1516–1518, witnessing the first steps of Luther's path towards reforming western Christianity.²⁵ However, Laurentius Andreæ (ca. 1470s–1555) had finished his German studies well before Luther's time. Olaus Petri, named secretary of the town council of Stockholm in 1524, Laurentius Andreæ, the king's secretary, and King Gustav Vasa himself have indeed been called the clover leaf that determined the course of the history of the Swedish Reformation.²⁶ Olaus Petri was a formidable preacher, while Andreæ was a practical and effective administrator, but most importantly, the newly elected king set the political framework in which Lutheranism started to grow. Gustav Vasa favoured the new doctrine for mainly financial and administrative reasons, related to the strengthening of his position as ruler. Because of the war with Denmark, ecclesiastical property had been impounded and taxed. At Vadstena early in 1526 the amount of the extraordinary tax demanded of the towns and the two thirds of the tithes of the parishes were to be used to pay a foreign debt. While an important precedent, the clergy only considered it a unique concession.²⁷

The dice was finally thrown at the Diet of Västerås in 1527. After many turbulent and emotional scenes, the political gamble of Gustav

²³ Holmquist, *Den svenska reformationen*, 8.

²⁴ Montgomery, "...enighet i religionen," 47–51; Anderson, *Lineages of the Absolutist State*, 173.

²⁵ Holmquist, *Den svenska reformationen*, 17–20.

²⁶ Holmquist, *Den svenska reformationen*, 28.

²⁷ Yrwing, *Gustav Vasa*, 16; Holmquist, *Den svenska reformationen*, 79.

Vasa paid off.²⁸ As a result, the Recess of Västerås was given on 24 June, 1527 organizing the Church on a new, more national and submissive basis. The final break with Rome was confirmed in January 1528 when Bishop Petrus Magni, representing the apostolic succession, anointed the three newly elected bishops without papal confirmation. Not all key posts were in the hands of Reformers at that point, though.²⁹ The king was finally crowned in Uppsala in 1528. The election of Olaus Petri's younger brother, Laurentius Petri (1499–1573) to the archepiscopal see of Uppsala with an overwhelming majority in 1531 meant that a committed evangelical was put in charge of the Swedish Church.³⁰

One of the first things King Gustav did was to initiate the 'expropriation of the Church, under the timely banner of the Reformation'. This included forfeiture of ecclesiastical land, usurping revenues such as fines and tithes and extracting valuables (gilt and silver vessels, bells, copper) from cathedrals and parish churches. The Swedish reformation has been called 'undoubtedly the most successful economic operation of its kind accomplished by any dynasty in Europe'. Unlike England or Germany, in Sweden 'virtually the entire windfall of ecclesiastical estates accrued *en bloc* to the Swedish monarchy'.³¹

There was hardly similar Swedish evidence of discontent with the canon law of marriage as among the intellectual and municipal élites of central Europe. Clandestine marriage was no great issue as the norms of the secular laws guaranteed parental consent in the public marriage process. Therefore, Olaus Petri did not address clandestinity in his works. As for the distinction between the present-tense and future-tense words of consent, alien to the Swedish system, it seems never to have gained much foothold. The clear distinction between the betrothal and wedding was marked in Sweden. Although the impotence of the secular officials in dealing with clerical sexual offenders was an occasional source of complaint, the monastic system seems to have been generally respected. Thus, the Swedish Reformation was largely imported, and the texts of the Reformers betray a major debt to Luther. German texts were also directly translated into Swedish and modified for domestic use. Later, many Swedes studied in Rostock and

²⁸ Holmquist, *Den svenska reformationens*, 95–99, 110; Yrwing, *Gustav Vasa*, 86–103; Montgomery, "...enighet i religionen," 51–54.

²⁹ Holmquist, *Den svenska reformationens*, 111, 152.

³⁰ Yrwing, *Gustav Vasa*, 121–125.

³¹ Anderson, *Lineages of the Absolutist State*, 173.

Wittenberg and some were even personally acquainted with German Reformers, like Philipp Melanchthon.³²

The main writers of Reformatory texts were Olaus Petri, the father of the Swedish Reformation, his brother Laurentius Petri, the first Lutheran archbishop of Uppsala, and Mikael Agricola (*ca.* 1510–1557), the founding father of Finnish as a written language and later bishop of Turku. As the impetus of the Swedish Reformation came from above, the main focus of the movement and the Reformers was on an attack against the Catholic Church and its institutions. The Church's political and economic power was the target of King Gustav and being the patron and protector of the first Reformers, he also called the tune. Apart from the question of clerical marriage, a change of matrimonial law was not very high on their agenda.

In his *Een liten boock om sacramenten* (A Small Book on the Sacraments) from 1528 Olaus Petri denied that any other Catholic sacraments except baptism and Holy Communion were founded by Christ himself. The rest of the seven, including matrimony, had no scriptural foundation and thus were not sacraments.³³ But then again, matrimony had been created by God for the reproduction of man. Matrimony was a highly respected, noble thing and a holy institution ordained by God himself. Man was meant to marry, fearing God and multiplying to the honour and praise of his Maker. Indeed, should God have preferred virginity, he would have created that estate.³⁴ Hence marriage was meant for all people, who had to follow God's creation and God's blessing of the married estate if they wanted to escape sexual sins. Consecrated virgins, for example, could be virgins in flesh but were less pure in their hearts. Therefore, all men and woman who were not impotent, castrated or who had a particular gift of chastity, had a positive obligation to marry in order to avoid fornication.³⁵

God, having blessed matrimony as he did, and having instituted the strict prohibitions on fornication, adultery and other sexual crimes, had wished all men to marry. Nor would the Bible have talked of bishops and

³² Kjöllnerström, *Striden kring kalvinismen*, 55–57, 65, 68.

³³ Olaus Petri, "Een liten boock om Sacramenten" [1528], 375–376, 399.

³⁴ Olaus Petri, "Een liten boock om Sacramenten" [1528], 399; Olaus Petri, "Een liten vnderuisning om Echteskapet" [1528], 446, 449; Olaus Petri, "Een liten boock j huilko closterleffwerne forclarat warder" [1528], 492.

³⁵ Olaus Petri, "Een liten boock om Sacramenten" [1528], 399–400; Olaus Petri, "Een liten vnderuisning om Echteskapet" [1528], 450–452; Olaus Petri, "Een liten boock j huilko closterleffwerne forclarat warder" [1528], 489–490.

deacons as one woman's men if marriage had not been permitted to all. God had created no exception of the spiritual estate and consequently, the commandment to marry or burn applied to them also. Similarly, sexual sins were reprehensible to all: laymen, monks, nuns or priests.³⁶ The insistence on celibacy was not only against God, the Bible and nature, but also against many of the 'old teachers' (i.e. Church fathers) and ecclesiastical canons. According to Petri, even the Greek and Eastern Church had always permitted bishops and priests to be married.³⁷ Although the popes had insisted on clerical celibacy, the whole clergy had never conceded to it—although the consent of the whole lesser clergy should have been required, considering the matter touched them all. The prelates, guided by the Devil and acting like Antichrists, had thus become tyrants and 'murderers of the souls' of the lesser clergy, unable to remain celibate, thus forcing them to commit various sexual crimes.³⁸ On a similar note Olaus Petri considered that those who had put their daughters into a nunnery, intending them to become God's brides, in fact made them into the Devil's brides. Worse than traitors and murderers towards their daughters, the parents destroyed thus both the life and soul of their own flesh and blood.³⁹

In this respect Olaus Petri lived as he preached: his was the first public wedding of a cleric who had taken a vow of celibacy. Having taken higher orders (*diakon*) in 1520, solemnized his marriage to Kristina in a church ceremony in February 1525. The public wedding was naturally meant to provoke, and Bishop Hans Brask of Linköping soon complained to the king about the marriage insisting on Olaus Petri's excommunication. The king retorted that he, in his limited understanding, found it strange that clerics should be excommunicated for marriage, which God had not forbidden, but not for adultery or other wicked deeds that God had denounced.⁴⁰ Within five years many priests had married more or less publicly, and the king defended their actions, although others chose not to formalize their relationships with their

³⁶ Olaus Petri, "Een liten vnderuisning om Echteskapet" [1528], 451–454.

³⁷ Olaus Petri, "Een liten vnderuisning om Echteskapet" [1528], 456–458, 460, 465.

³⁸ Olaus Petri, "Een liten vnderuisning om Echteskapet" [1528], 462–463.

³⁹ Olaus Petri, "Een liten boock j huilko closterleffwerne forclarat warder" [1528], 520–521.

⁴⁰ *Handlingar till Sverges reformations- och kyrkohistoria II*, 346; Holmquist, *Den svenska reformationens*, 45–46, 50–51; 11.4.1525, *GFR* 2, 85–86; 26.3.1525, 326, *BHBR*, 377–378; 26.3.1525, 327, *ibid.*, 379; 11.4.1525, 335, *ibid.*, 387; 340, *ibid.*, 390.

housekeepers. Monks and nuns were leaving their cloisters, claiming their inheritances and getting married.⁴¹

Olaus Petri went on to comment on the forbidden degrees of kinship and affinity in Leviticus. These and only these had been forbidden by God, which should have contented even the papacy, as the 'pope and his crowd' could hardly expect to do better than God himself. Even so, the popes had extended the forbidden degrees until the fifth degree and created the impediment of spiritual affinity, both without scriptural support. If people married, they only had to obey God's law and not mind the papal laws or seek dispensations.⁴² The following year the Council of Örebro decreed on a more cautious note: as the 'pope's law' forbade some degrees that were not prohibited by the God, dispensations could be granted for righteous (*redeliga*) causes provided that scandal was avoided.⁴³ Emulating Continental Reformers, Olaus Petri argued that the papists had misrepresented divorce as well. Adultery justified, according to Christ, divorce with a right for the innocent party to remarry instead of mere separation from bed and board. A separation only caused people to fall into adultery or fornication and this was contrary to the meaning of marriage as a remedy for sin.⁴⁴

Because the divine estate of marriage was to be entered seriously and deliberately, the parties had to understand the step they were contemplating. The canonical ages of consent, fourteen for boys, twelve for girls, were perceived to be too low, as children were too young to fully realize what they were doing. In Sweden, the traditional male age of majority at fifteen was recommended, e.g. by Mikael Agricola, who thought a girl had to be fourteen.⁴⁵ While the 1571 Church Ordinance left the exact ages of 'children and minors' unspecified, the matter was largely left to the discretion of the clergy. Especially in Finland marriages between children were claimed to be customary.⁴⁶ Individual circumstances indicating the person's physical and spiritual maturity were

⁴¹ E.g. *SRA I:1*, doc. 58, 109.

⁴² Olaus Petri, "Een liten boock om Sacramenten" [1528], 400–401. See also Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 17–18; Knuutila, *Avioliitto*, 113–136, 141–149, 158–160.

⁴³ Statutes of the Council of Örebro, *SRA I:1*, 119.

⁴⁴ Olaus Petri, "Een liten boock om Sacramenten" [1528], 401–402; Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 18.

⁴⁵ Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 17.

⁴⁶ E.g. ULA, UDP, 10.11.1596, 131v; Söderlind, "'Lagha' ålder," 70–71; Knuutila, *Avioliitto*, 179–183.

discussed in the chapters, as were the economical circumstances and possible intercourse between the couple that spoke for the marriage.⁴⁷

4.2 *The Lutheran Church and the Control of Marriage: The Net Tightens*

The Jurisdiction of Matrimony in the Swedish Lutheran Church

In Sweden, despite the onset of the Reformation, ecclesiastical jurisdiction was to remain more firmly on its medieval foundations with the existing diocesan structure. At the Diet of Västerås in 1527, King Gustav I Vasa and the estates issued the so-called Ordinance of Västerås, staking out the new boundaries of ecclesiastical jurisdiction. Bishops were to continue to adjudicate in matrimonial disputes: whether a marriage was in accordance with God's Law and whether a divorce should take place. However, if someone was sentenced to pay fines in a matrimonial cause, the bishops were to account for them to the king.⁴⁸ In cases involving sexual crimes like adultery, fornication and violation of a virgin, the fine was to go to the king.⁴⁹ In this the king followed the lead of Martin Luther, who was in favour of separating the two swords so that both authorities were distinct from each other and both minded only their own tasks.⁵⁰

After the early stages of the Reformation, matrimonial causes were in the hands of the Swedish Lutheran Church and the bishops. The 1571 Church Ordinance conceded that matrimonial causes belonged more to secular than ecclesiastical courts, but having been so long under ecclesiastical jurisdiction, they could remain there; especially as they often affected people's souls and consciences. Should difficult cases nevertheless arise that were unsolvable without the power of the secular authorities, these were to be referred accordingly to them, ultimately

⁴⁷ E.g. VDA, VDP A I:1, 25.10.1600, 89v; VDA, VDP A I:2, 25.10.1600, 23; VLA, VDP A I:2, 7.9.1600, 22. See also Söderlind, "'Lagha' ålder," 69–76; *CEAP*, 303.

⁴⁸ 8, Ordinance of Västerås, *SRA I*, 90–91. Both the Swedish text and the Latin translation were ambiguous concerning the contents of the word 'divorce' (*äthskilnad*; *divortium*): it could thus mean separation, annulment or divorce in the present-day meaning.

⁴⁹ 19, Ordinance of Västerås, *SRA I*, 93.

⁵⁰ Martin Luther, "On Marriage Matters" [1530], 264–265, 317–318. See also Harrington, *Reordering marriage*, 84–85; Witte, "Zwischen Sakrament und Vertrag," 397–399, 420; Witte, *Law and Protestantism*, 229–230; Dieterich, *Das protestantische Eherecht*, 80–81, 86–87, 180–181.

to the king. For all intents and purposes the ecclesiastical organization remained unaltered: the bishop with his chapter, rural deans and parish clergy. Normally the bishop and his chapter resolved cases in the cathedral town, but episcopal visitations extended the bishop's personal oversight to a geographically much wider area.⁵¹ In this sense there is a considerable contrast with the development in certain Continental cities, where Protestant clerics had initially largely taken over the jurisdiction for matrimonial causes from the episcopal courts in the mid-1520s. This was to prove a short interlude, as the secular authorities soon assumed matrimonial jurisdiction and legislation although the clergy retained an advisory role. Special marriage courts (*Ehegerichte*) with their own court constitutions cropped up, for example in Basel and Strasbourg (1529) and in Zürich (1525).⁵² The jurisdiction of some of these courts came to encompass even other moral offences such as adultery, concubinage, prostitution, pimping, even drunkenness and cursing. Thus, for example, in Zürich the marriage court became a *Sittengericht*.⁵³

The Swedish sixteenth-century bishops had generally given up the medieval three-year visitation cycle, extending the interval between their visits to each parish from five to ten years. The seventeenth-century bishops, however, were generally more assiduous. The location of the parish was generally the decisive factor: the heartlands of the diocese often in the proximity of the episcopal see tended to be visited much more frequently than more distant parishes. The sparsely inhabited region of Norrland seems to have hosted episcopal visitations only rarely: after 1585 the next visitations seem not to have been until 1616 and 1642.⁵⁴ Thus the responsibility of ecclesiastical supervision remained more on the shoulders of the rural deans and the parish clergy. In Finland the rural deans held their visitations or 'rural deans' assizes' intermittently until the late sixteenth-century.⁵⁵

⁵¹ KO 1571, Om biscopar, 166; Art. 14, *Biskop J. Rudbeckius' kyrkio-stadgar*, 34; Paarma, *Hüppakuntahallinto*, 299–305.

⁵² Ozment, *When Fathers Ruled*, 30–31. See also Harrington, *Reordering marriage*, 134–166. On the *Ehegerichte* see, e.g. Wendel, *Le mariage*, 76–79, 91–93; Safley, *Let No Man Put Asunder*, 122–163; Safley, "To Preserve the Marital State," 164; Stutz, "Zu den ersten Anfängen," 299, 307.

⁵³ Stutz, "Zu den ersten Anfängen," 301.

⁵⁴ Lempiäinen, *Pispan- ja rovastintarkastukset*, 44–78.

⁵⁵ Pirinen, "Keskiajan ja 1500-luvun," 19–27; Paarma, *Hüppakuntahallinto*, 284, 286–292.

In 1585 the clergy of the diocese of Strängnäs complained that bailiffs and governors were encroaching on the ecclesiastical jurisdiction in matters of marriage and penance among others. The clergy inquired whether it really was the will of Duke Karl that the *jurisdictio ecclesiastica*, traditionally observed and respected by the Christian authority, would be destroyed by secular justice without the support of law or justice.⁵⁶ Although the role of the Church in determining legitimacy and illegitimacy seems to have been generally accepted, occasionally secular courts reversed the Church's decision.⁵⁷

Besides, as much as the Reformers had a penchant for quoting the Bible as a judicial authority, this had its limits. Although the Bible furnished justification for the prohibition of sexual relations and marriage with close relatives and affines, it was no help in justifying the impediment up to the third and fourth degree. These were extensions based on the law of the Church, not natural law, as was well known in the Middle Ages. Therefore, Reformers favoured the abolition of such man-made bans. This was the logical reaction of the first generation of Swedish Reformers such as Olaus Petri. However, many were more conservative, and if the Bible provided no justification, canon law was the next best solution, as it could at least reflect the existence of a long legal custom, even if its authority had been shaken by the Reformation.⁵⁸ Moreover, old paragraphs received their new justification in a Reformed light. In his Commentary on the town law (1608), for instance, the jurist Johan Skytte noted that the law had good grounds for considering children sired after betrothal as legitimate (*adelkonubarn*), as even Moses had called a trothplighted maiden her fiancé's wife.⁵⁹ The reception of Mosaic law began in earnest in the early seventeenth century, and the seventeenth century a period called Lutheran Orthodoxy was the heyday of the Bible as a source of law.⁶⁰

If the efforts of the medieval Swedish Church were directed toward Christianizing marriage and establishing ecclesiastical jurisdiction in matrimonial issues, those of the post-Reformation Church built on

⁵⁶ SSA II, 19, 33.

⁵⁷ 17.2.1595, *Uppländska konungsdömar*, 159.

⁵⁸ E.g. SSA II, 19.

⁵⁹ *Johan Skyttes kommentar 1608*, G, Ca 2.5, 25.

⁶⁰ Munktel, "Mose lag," esp. 136–146; Almquist, "Karl IX"; Kjöllnerström, *Guds och Sveriges lag*.

the work of the Catholic Church. The interests and authority of the Catholic Church had been accepted in the course of the Late Middle Ages. The ultimate aim of the Lutheran Church was, therefore, to clip the wings of the Swedish marriage process by reducing the role of the various stages, thus giving the ecclesiastical ceremony the pivotal, if not the fundamental role in marriage formation.

The Clergy: Dependence on the Crown and Intensifying Internal Discipline

The Reformation broke the independence of the Swedish clergy. With the weakening of the economical backbone of the ecclesiastical liberties, the amassed landed wealth began to disperse mainly to the king and noble claimants. A considerable amount of the movable property of the Church, cash, precious stones and metals, were given more or less voluntarily to pay for royal needs and wars. The clergy were reduced to economic dependency on the Crown, while clerics became more or less royal officials and wage earners. Inflation had nibbled away the costs of ecclesiastical rites with which the clergy had augmented their income. Voluntary offerings were scarcer because the financial resources of the peasantry were more constrained because of the increasingly effective and expensive administration and taxation system. The ecclesiastical jurisdiction had lost its autonomy, as the Church had to account to the royal bailiffs for all the fines received. As a result, it had lost an important source of revenue.

Although the state administration had developed considerably in the second half of the sixteenth century and early seventeenth century, the hierarchy could not yet rival the effectiveness of the ecclesiastical organization on a local level. The dioceses were divided into rural deaneries, which in turn comprised many parishes. The Church had its representative in each and every parish of the country, and the local cleric had a considerable knowledge of his parish community. The Crown started to use the ecclesiastical organization for its own purposes, even in wholly secular matters: to make taxation lists and swear that they were accurate, to check the accuracy of the levy rolls and later to register births and deaths. The economical and social interests of priests were often intertwined with those of their parishioners, and the clergy was not too enthusiastic about their duties as semisecular local officials. The economical dependency of the clergy was additionally emphasized by the practice that bailiffs collected the ecclesiastical taxes

and afterwards paid the vicars their share of the sum. Although clerics were thus spared the trouble of collecting the taxes, the financial subordination could also be used to ensure their co-operation and loyalty.⁶¹

During the reign of Gustav I at least, the clergy was considered politically too unreliable and numerous to be trusted as the local spokesperson of the king, nor did the Crown have any very effective means of ensuring its loyalty. Therefore, during this period the bailiffs were used as sources and distributors of information in the local communities.⁶² Still, the clergy had some clear advantages *vis-à-vis* the bailiffs. First, they were more numerous and lived closer to their parishioners. This intensified their usefulness to the Crown: on one hand they reached a larger audience, on the other hand this tightened up the control. In addition, in their capacity as servants and mouthpieces of God, the clergy had an important role as spiritual advisors and authorities of their flocks.

Ecclesiastical discipline, which had suffered severe blows during the Reformation and the following decades of dogmatic self-searching, became a joint project of the Crown and the higher clergy. By and by, the Church recovered its disciplinary powers and authority, while ecclesiastical instruction and ideological indoctrination was to create uniformity and make the people more humble, obedient and pliable in their dealings with the Crown and its officials. This indoctrination was to facilitate their acceptance of the rigid hierarchy of the Swedish war society, which made increasing demands on men and money, human and financial resources. If the Crown came increasingly to play the role of judge, the Church came enthusiastically to play the police.⁶³

This policy of more effective control, in which the role of the clergy played a fundamental role, necessitated a more numerous clergy, and in less than a century the number of clerics more than doubled. The Finnish clergy constituted in 1615 about 280 clerics—of which 132 were vicars or higher clergy and the rest were other priests (chaplains, curates, army chaplains, etc).⁶⁴ The seventeenth century was an era of great expansion for the clergy in the whole of Sweden. In Finland in 1710 there probably were more than 600 clerics, of which vicars and

⁶¹ Aalto, *Kirkko ja kruunu*, 140.

⁶² Hallenberg, *Kungen, fogdarna och riket*, 146.

⁶³ E.g. Aalto, *Kirkko ja kruunu*, 140–141; Ylikangas, “Väkivaltarikosten motivaatiopohja,” 106.

⁶⁴ Blomstedt, “Suomen papiston lukumäärä,” 121.

higher clergy constituted less than a third. In certain areas many new chapels had been established, which increased the number of the lower clergy considerably.⁶⁵ At least in Finland, the increase of the number of clerics was much more rapid than the general population growth.

The control machinery had been developed, but the efficiency of the system depended on the morals and discipline of the custodians. Monitoring the behaviour and mores of the lower clergy was important. These efforts are clearly demonstrated in the records of the cathedral chapters and occasionally even in secular court records. Nothing certain can be said of the success of this improved control although the occurrence of such cases suggests that conscientious bishops investigated rumours of wrong-doing. As a class, ordinary late sixteenth-century clerics, usually sons of burghers, artisans or peasants, were hardly distinguished from their parishioners, mainly consisting of peasants. For this reason they also did not stand unanimously behind the ecclesiastical view of marriage as an act controlled by the Church. In fact, because of the unsettled state of clerical marriage in the early Reformation period, many clerics had married without ecclesiastical ritual or blessing.⁶⁶

In medieval Sweden the Catholic clergy had naturally been disciplined for their sexual sins although the extent and efficacy of the control is unclear because of a lack of evidence. Yet it would seem that ordinary straightforward concubinage was considered no great sin if it did not combine any other crimes such as adultery or incest. Therefore, the Lutheran Church pursued the traditional policy in punishing the errors of the clergy. When the clergy was allowed to marry, however, they were expected to uphold the absolute sexual morality, and a blind eye was no longer turned to lesser offences. The late sixteenth-century chapter records contain many examples of clerics committing adultery.⁶⁷

⁶⁵ Blomstedt, "Suomen papiston lukumäärä," 122–123. Pitkänen ("Suomen väestön", 34–39) has estimated that in 1570 the population of Finland was approximately 300,000. However, the seventeenth century was branded by pestilence, war and famine. Consequently, population growth was slow and in some regions there was a decrease of population rather than an increase. Moreover, the years of great famine in the 1690s and the Great Northern War (1700–1721) decimated the pre-famine population of 425,000–450,000 to 350,000 in 1721.

⁶⁶ E.g. ULA, Dalarnas dombok, 9.3.1546, 6.5.1546, 45, 57; 20.9.1544, *HSRH II*, 252–253.

⁶⁷ E.g. *Saköresbok för Medelpad 1541–1609*, 147; ULA, UDP, 28.6.1593, 4–4v.

Still, it was perhaps worse that certain clerics failed to set an example of the proper way of contracting marriage to their parishioners. Several priests were caught cohabiting with their brides after betrothal or trothplight and were found guilty of premarital fornication. Deprivation of the office for some months was considered appropriate punishment for impatient clerical grooms. In 1583 David, chaplain of Tuna, was deprived of his office until he purged himself of sinning both with his trothplighted bride, with whom he had had intercourse for many years, and his 'betrothed wife' in West Gothia. His behaviour was considered unworthy of a cleric and a bad example.⁶⁸ Priests were also not to perform rites such as ecclesiastical solemnization or churching without determining whether the conditions for the ritual had been met with. In the mid-seventeenth century, a priest marrying a couple from another parish without preceding banns could face suspension for many months, even a year.⁶⁹

A Lutheran clergyman was not to forget his position, even when choosing his prospective bride. He was supposed to avoid everyone that could bring himself or his office into disrepute or disrespect, and this also applied to his marriage partner. The woman, be she a maid or a widow, had to be virtuous and honourable. In addition, a clergyman's wife was not to dress luxuriously and fashionably, and she could not be a drunkard or of ill repute.⁷⁰ In some dioceses like Strängnäs after the 1620s, priests were compelled to swear a 'priests' oath', in which they, among other things, pledged not to get engaged or marry without informing and obtaining the consent of the bishop and the chapter. This was thought necessary to prevent young clerics from entering into marriage too hastily and without due consideration before they had means to support themselves, let alone their wives.⁷¹ In fact, when clerics were permitted to marry, the vicarage, the home of the married Lutheran priest and his legitimate family, came to serve as the best example of idealized married life. The priest, his family and household were expected to be exemplary in all respects, such as having

⁶⁸ Synod of Strängnäs 1583, *SSA II*, 5. See also Synod of Strängnäs 1585, *ibid.*, 16, 20–21; ULA, UDP, 13.6.1599, 157v; ULA, UDP, 23.5.1598, 141.

⁶⁹ E.g. *Bidrag till svenska kyrkans och riksdagarnes historia*, 115–116. See also *Church Law of 1686*, 15:3.

⁷⁰ 19, Georg Normans kyrkoordning på svenska, *BSKH*, 17; *KO 1571*, Itt sett att ordnera prester, 154–155; Kyrko-ordning för Vexjö Stift 1619, *ES VIII*, 610. For similar requirements in the Eastern Church, see Levin, *Sex and Society*, 260–264.

⁷¹ Lundström, *Laurentius Paulinus Gothus*, 303–304, appendix v, 22.

household prayers regularly and testing the household and children on their knowledge of the catechism a few times per week.⁷²

The Position of the Clergy: Controlling Conduct at the Parish Level

At the meeting of the nobility in Stockholm in 1562 the Swedish bishops convened to discuss matters regarding the practices of the church and ecclesiastical discipline. The rowdy popular wedding celebrations preceding ecclesiastical solemnization on Sunday were one of the major issues on the agenda. The clerics concluded their deliberations in agreement on disciplinary sanctions for all priests failing to punish such practices, associating with peasants at such occasions, getting drunk on Saturday night and yet performing their duties in the morning. Such clerics were to be deprived both of office and benefice.⁷³

The appropriating or 'secularization' of the Church's possessions by the state in the decades following the Reformation may have freed the Swedish Church from temporal concerns that had distracted the medieval Church's attention from spiritual things. Much of the Catholic Church's energy and resources in Sweden had been wasted on managing its considerable estates, taking part in national and international politics and temporal administration. A great deal changed when the king became the supreme head of the Church, 'liberated' the Church of much of its worldly possessions and took over responsibility for the upkeep of the clergy. The time of ecclesiastical princes, such as the powerful Archbishop Gustav Trolle (archep. 1515–1521), had passed and the Lutheran archbishops were supposed to be the administrators of their archdioceses, the defenders of the Church's dogma and the supreme pastors of their flocks. 'The delimitation of ecclesiastical competence...enabled the church to focus upon those spheres where its competence remained intact'.⁷⁴ These words, spoken of the eighteenth-century Russian Orthodox Church, apply equally well to the post-Reformation Swedish Lutheran Church.

Gregory Freeze has listed some elements as *conditiones sine qua non* for the Church's effective control over marital matters. These were the unambiguity and comprehensibility of legislation, reliable parish documentation and a sufficiently developed bureaucracy, including the

⁷² Witte, *Law and Protestantism*, 231–23; Lundström, *Laurentius Paulinus Gothus*, 188.

⁷³ *SRA II:I*, 62.

⁷⁴ Freeze, "Bringing Order," 716, 719.

creation of dioceses of manageable size, the expansion of diocesan administration and the hierarchical supervision of the lower clergy.⁷⁵ Other factors hindering the observance and enforcement of sexual (and marital) standards were the lack of education among the priests, and the dependence of the clergy on their parishioners both socially and financially, making clerics unwilling to challenge them directly.⁷⁶ Priests, recruited as they were from the ranks of the peasantry and living like the peasantry did in the local community, shared to some extent the values and customs of the parishioners.

The necessary elements of effective control of marriage and sexual conduct in early modern Sweden developed as a result of both the Church's and the state's administrative organization and their mutual co-operation. Furthermore, this required the improvement of the education of the clerics and an improvement on the clergy's corporative cohesion. A clergyman could not effectively fulfil his new role as the local extension of central power before he had financially and socially been separated from the ranks of his parishioners.⁷⁷ Only when the clergy endorsed the moral norms related to marriage and sexuality could they be relied upon to control and discipline their flocks. They had to be recruited to guard each other's morals. At synods rural deans were forced to publicly report on the mores of the priests in their deanery, and priests were required to report on the behaviour of the deans. Moreover, the complaints of the parishioners were to be investigated.⁷⁸

The exercise of ecclesiastical supervision varied considerably from one parish to another. Although sources from the 1590s reveal many vicars who were eager to establish better ecclesiastical discipline in their parishes, the attitudes of the majority was considerably more indolent.⁷⁹ Even in lesser cases, such as enforcing penalties for disregarding solemnization within the proper time limit after betrothal, in practice the efficiency of the norms depended greatly on the zeal of the cleric in question.⁸⁰ As the effectiveness of the system largely depended on the diligence of the clergy, the speed of the development of a stricter moral regime and of attitudes towards sexual offences obviously varied

⁷⁵ Freeze, "Bringing Order," 713–719.

⁷⁶ Levin, *Sex and Society*, 298–299.

⁷⁷ Aalto, *Kirkko ja kruunu*, esp. 131–177.

⁷⁸ Lundström, *Laurentius Paulinus Gothus*, 323. See also Levin, *Sex and Society*, 298–299.

⁷⁹ E.g. Hassler, "Penitens och plikt," 219–222.

⁸⁰ Lennartsson, *I säng och säte*, 88.

in different parts of the Swedish realm. In many parts of Sweden the volume of prosecuted sexual offences had risen in the latter part of the sixteenth century, reaching other parts of the country only later. In Finland the province of Pohjanmaa (Ostrobothnia) was the first to be influenced by the stricter supervision. While the percentage of sexual crime of all criminal cases had been only 1.3 per cent in the 1540s, it rose to 12.8 per cent in the 1580s, thus paralleling the Swedish figures of the time.⁸¹

Not all members of the Swedish clergy were particularly zealous in strictly observing ecclesiastical norms regarding the proper preliminaries to the weddings they were to perform. Martinus Johannis, a deposed and divorced priest, had remarried without permission. When he was interrogated by the Stockholm chapter, he was quick to point out that he had waited for five years before honestly pledging his troth (*een ärlig troloffven*) to his second wife in presence of her mother and kin. She then followed him to Uusimaa in Finland where they met some soldiers under Arvid Dracke, and the military preacher, *herr* Nils of Dracke's troops (*fana*), who later became the vicar of Sparsättra, had betrothed them (*fäste... tillhope*).⁸²

Preachers in general seem to have been more lax than the regular parochial clergy in ensuring that no irregularities arose. They lacked the regular incomes and stability of a benefice and they were not under the regular supervision of the rural deans and bishops. In 1656 the governor complained to the Turku chapter that the preacher of the Castle of Turku was solemnizing marriages between soldiers and serving wenches without examining whether the parties had prior engagements or not. The chapter decided to investigate the matter and if necessary, punish the preacher.⁸³ Concerns regarding the incompetence and laxity of clerics were worrying Reformers elsewhere, too: for example in Scotland the Church's efforts in improving the general morality and its very authority being undermined by unruly men of the cloth.⁸⁴

In the first half of the seventeenth century, the clergy of the hundred of Porvoo was still quite prepared to act as informal mediators in cases involving the disputes and offences of their parishioners. Moreover, in the 1620s preferring to settle matters informally for a small financial

⁸¹ Ylikangas, "Väkivaltarikosten motivaatiopohja," 109.

⁸² SSStA, SDP, 5.11.1595, 33. See also 27.11.1624, *UÅD 1624-1625*, 71.

⁸³ 26.8.1656, *CEAP*, 8.

⁸⁴ Graham, *The Uses of Reform*, 130-131.

consideration, they did not inform royal officials of their parishioners' sexual *faux-pas* unless they were involved in local disputes or could not be resolved within the community. A pattern of unwillingness to inform the authorities of sexual crime, outright mendacity towards the authorities, hiding of criminals and helping them escape punishment came increasingly to light later in the seventeenth century. The situation was changing with the entrance of the 'new' clergy into the offices in Finland. These often Swedish-born clerics were consequently independent of their parishioner, and they had imbibed the principles of stricter ecclesiastical discipline. These newly appointed priests started to enforce a stricter moral *régime* by prosecuting and denouncing sexual offenders on an unprecedented scale. The supervisory system reached its peak in the 1660s, when civil servants and law-readers started to control the activities of the clergy and to prosecute offenders, whom the clerics only forced to undergo ecclesiastical censure, leaving them otherwise unaccused.⁸⁵

Mobility also hampered the parish priests' ability to determine the existence of marriage impediments. Even if certificates of non-impediment could be obtained by the local clergy, the lack of written ecclesiastical records of rites performed was a problem. In the diocese of Uppsala in 1608, the clergy was told to keep a written register of all baptisms and another of weddings and engagements. The latter was justified with the need to respond to inquiries: if someone claimed to have been married *in facie ecclesiae* at a certain time and place, this could be checked.⁸⁶ The earliest surviving register of publicized banns dates from early seventeenth-century Stockholm.

In the diocese of Linköping Bishop Johannes Bothvidi, following the instruction of Gustav II Adolf (r. 1611–1632), issued in 1633 a statute on the keeping of parish records: apart from the church inventories, all births, baptisms, marriages and trothplights were to be recorded. However, the practice varied between dioceses, just as the keeping of parish records depended on the activity and meticulousness of the priest. The records, if kept systematically, could occasionally only be a bundle of loose papers. The oldest surviving Swedish parish register

⁸⁵ Aalto, *Kirkko ja kruunu*, 48, 68–69, 131–133, 168–172; Lehtinen, *Hallituksen yhteinäistämispolitiikka*, 216–219; *CEAP*, 246, 256.

⁸⁶ Synod of Uppsala 1608, *SSA I*, 16–17. See also *Church Law of 1686*, 24:8. On the post-Reformation introduction of parish records see Wendel, *Le mariage*, 117; Harrington, *Reordering marriage*, 182.

is from 1616—in present-day Finland from 1648. During the Thirty Years' War (1618–1648) the Swedish state also began to take an interest in the births and deaths of its subjects, and therefore, the practice of keeping these records was standardized in 1686.⁸⁷ According to some manuals, the priests performing trothplights were also to record the time and the witnesses of the engagement.⁸⁸ The clergy was proving its usefulness as a means of controlling the people.

4.3 *Love or Duty: Free Choice and Parental Consent in Reformation Sweden*

The Reformation and Parental Consent: Protestant Theory and Practice

From the mid-fourteenth century on, there was a growing trend to teach the catechism to laymen. This catechizing movement necessitated a wide range of vernacular literature that addressed and explained important matters such as the creed, the most important prayers and the Ten Commandments. Fifteenth-century synodal statutes started to require that priests instruct their parishioners, and the catechetical reform movement influenced countries like England, France, Italy, Spain and the German lands. An emphasis on the Decalogue, God's own Law, came to correspond—or support—a growing trend of patriarchalism, basing on the fourth commandment. This movement inspired both Reformed and Catholic theologians alike, and not surprisingly, also gained the support of the secular rulers, who encouraged the reforming of public morality by and helped in the disciplining by issuing police (*Policey*) regulations.⁸⁹

Like many of the theologians of his time, Martin Luther was a great believer in bringing children up properly, which he called a married couple's 'shortest way to heaven'. Children should not be spoiled and left to please themselves, because parents were to have less regard for the bodies of their offspring than for their souls. Children were occasionally to be disciplined, because a child was regarded as 'an eternal treasure God had commanded' the parent to protect. Children were to be brought up so that they were not ashamed to request their parents

⁸⁷ Lempiäinen, *Kastekäytäntö*, 196–201; Lempiäinen, *Piispan- ja rovastintarkastukset*, 123, 164–166, 340–342.

⁸⁸ Kihlaamisen tapa (1652~1657, Manual for Engagements), in Perälä, *Eskil Petraeus*, 273.

⁸⁹ Bast, *Honor Your Fathers*, esp. 6–23, 43–45, 53–65, 179–185.

to find them suitable marriage partners. While parents had to convince their children that they wished to counsel them, in return the children were not to become engaged secretly without consulting their parents.⁹⁰ In the county of Hohenlohe, Caspar Huberinus argued that God had created the institution of marriage and placed the parents and authorities in His place. They were to rule over matrimony, and children were to obey their parents, following God's Commandment.⁹¹

Although Martin Luther considered that both parents and their children were to consent to marriage, he was quite unequivocal in his condemnation of forced engagements, which in his opinion were invalid and a source of 'mischief'. Even under favourable circumstances it was difficult for a marriage to survive the temptations of the world, the flesh and the devil, and a forced marriage invited trouble. As natural law and God's law were against coerced marriages, the clergy was to persuade people not to use 'unpaternal, tyrannical, criminal power', and indeed, secular officials were to restrain and punish such excesses of paternal authority.⁹² These thoughts were also echoed in legislation permitting courts to overrule malicious parental opposition, arising e.g. from an unwillingness to divide the estate.⁹³ If the children, however, capriciously rejected a match that was generally acknowledged to be advantageous and honourable, the parents had a perfect right to punish their wayward offspring. After all, children were bound to obey their parents and Christian freedom could not be abused for one's own pleasure to vex and injure others.⁹⁴

Luther did, however, emphasize consent in the Romanistic way, namely, that in order to be properly performed and public, an engagement had to take place with the knowledge and consent of those who had the authority and power over the marriage. He buttressed his opinion with the authority of the divine, natural and temporal imperial law, examples taken from the Old Testament, the ancient canons and 'the best points of canon law'. Finally he even threw in common-

⁹⁰ Luther, Martin. "A Sermon on the Estate of Marriage" [1519], 11–13; Martin Luther, "The Estate of Marriage" [1522], 39–41, 46. See also Ozment, *When Fathers Ruled*, 146–150; Bast, *Honor Your Fathers*, 78–104.

⁹¹ Robisheaux, *Rural society*, 102.

⁹² Martin Luther, "On Marriage Matters" [1530], 268, 304–306; Martin Luther, "The Estate of Marriage" [1522], 28–29. See also Lähteenmäki, *Sexus und Ehe*, 117–119.

⁹³ E.g. Wendel, *Le mariage*, 105; Harrington, *Reordering marriage*, 199–200.

⁹⁴ Martin Luther, "On Marriage Matters" [1530], 309–310.

sense arguments. It could not be reasonable, he argued, for a man who had reared his daughter at much expense and through hard work for many years to let any stranger, rogue or enemy steal her away. Surely a daughter was to be protected as well as property, if not better. It could hardly been expected that this evil deed should be rewarded with the perpetrator gaining possession of the wronged father's property as well. This would be 'granting an opportunity to damage and destruction'. All secret engagements were not to be considered binding on the conscience, and not only to be prohibited but also rendered null and void.⁹⁵ The Zürich theologian Henrich Bullinger considered that those opposing parental consent to the marriage of children not only wanted to contract marriages against parental wishes, but also were advancing themselves and gaining fortunes by matrimony. Clandestine unions led to misalliances giving the patrimony of families into the hands of undeserving fortune hunters.⁹⁶

Luther felt a child forced into a marriage against his/her will had to remain in that union unless (s)he had publicly protested. At least an appeal should be made to good friends, the priest or the authorities, as mere tacit dissent at a public betrothal simply was not enough. But if the child was closely guarded, kept *incommunicado*, betrothed without any co-operation, and if (s)he could later successfully prove all this, (s)he could free herself even from a consummated union.⁹⁷

In fact, all evangelical theologians and lawyers condemned both marriage without parental consent and forced marriages: rather, the apple of discord was whether the unauthorized marriage was to be considered valid or not. If consummated, the clandestine marriage was generally considered binding and indissoluble. Unconsummated marriages were to be dissolved especially if the union was dishonest and dishonourable and if the parents had good reason to oppose to it. The authorities could otherwise force the parents to consent. The necessity of parental assent could also be tied to minority, but even widows might require parental consent in some regions. As a result of the emphasis on the increased role of parental consent in the Protestant ideology, the matrimonial regimes changed accordingly. In most Protestant lands marriage was only allowed with parental consent. While many jurists

⁹⁵ Martin Luther, "On Marriage Matters" [1530], 268–272, 279–281.

⁹⁶ Safley, "Civic Morality," 173.

⁹⁷ Martin Luther, "On Marriage Matters" [1530], 307–308.

concurred in this, relatively few Lutheran church ordinances ordered that all unions without parental consent were annulled automatically especially if duly witnessed or solemnized.⁹⁸

Popular wedding customs were disliked by the Calvinists and German Lutherans alike. 'Secret marriage', which could either mean traditional marriage without church wedding or marriage created by mere mutual clandestine consent, was prohibited. In Hohenlohe the Protestant doctrines were not embraced as a whole, but rather the peasants used them to reinforce patriarchy. The normative base was laid by a succession of church ordinances and marriage laws not only making all secret marital unions of persons under parental authority without proper consent illegal but also null and void.⁹⁹ The 1563 Marriage Ordinance of the Palatine-Electorate of Speyer also insisted that those abetting minors to marry against parental wishes were to be considered guilty of kidnapping, instantly imprisoned and punished by a gaol spell, fine or banishment.¹⁰⁰

The general tendency, nevertheless, was not as strict as in Hohenlohe. The result was usually of double consent—that of the parents and their children—a mutual right to veto the plans proposed by either. Indeed, this reinforced the perception of mutual responsibilities and co-operation. The plans of the children had to be presented by their parents for acceptance, while the latter were not allowed to unreasonably hinder their children's conjugal unions, but 'rather to help them make responsible decisions'.¹⁰¹ The Augsburg Ordinance of 1537 conceded on the one hand that parents ought to 'take the greatest care to respect and advance' the profit and welfare of their children's persons and property. On the other hand, children were not to be 'forced against their will into a marriage they find unpleasant and undesirable'.¹⁰²

Some regions differentiated between under-aged children and children who had passed the age of majority. The age at which a child could marry without parental consent was raised in the course of the sixteenth century. This phenomenon has been explained as the result of a combination of demographic changes as well as of parental and

⁹⁸ Dieterich, *Das protestantische Eherecht*, 123–127, 154–157, 193–204; Witte, *Law and Protestantism*, 238–239. See also Ingram, "Spousals Litigation," 49–51.

⁹⁹ Robisheaux, "Peasants and pastors," 282, 285–287, 292–295; Robisheaux, *Rural society*, 102–103, 108. See also Harrington, *Reordering marriage*, 188–189.

¹⁰⁰ Harrington, *Reordering marriage*, 189.

¹⁰¹ Safley, "Civic Morality," 174.

¹⁰² Ozment, *When Fathers Ruled*, 39.

magisterial efforts to prevent immature or non-selfsupporting alliances. While the limits in Strasbourg had been nineteen for men and fifteen for women in 1500, they went up to twenty-four and twenty in the 1520s and 1530s, only to reach the dramatic peak of twenty-five for both sexes in 1565. This trend cannot be blamed on Luther alone. The Reformer Johannes Brenz suggested a marriage age of twenty-five for both sexes, but Luther was more fearful for the moral and mental health of the young and recommended marriage at a much earlier age.¹⁰³

This trend of reinforcing—at least theoretically—paternal/parental power over marriage is present also in the marriage legislation of other Protestant countries. Still, cautious voices have been raised against ascribing too large a role to the Reformation in establishing effective parental control of children's marriages.¹⁰⁴ Not only did the demands for more control and some patriarchalist reforms antedate the Reformation, as, for example, the Strasbourg law from 1500 that insisted that all widows have guardians whether they wanted them or not.¹⁰⁵ Moreover, the trend of increased parental control was by no means geographically restricted only to Protestant countries. The Council of Trent did not draw clear rules of parental intervention, and ecclesiastical courts in Catholic countries continued to deal with cases of annulment, based on force and fear, where the parents compelled children—especially daughters—to marry against their wishes.¹⁰⁶

The sixteenth-century ideological transformation aimed at developing and incorporating the tradition of paternal authority into political thought. To complement the image of the *Hausvater* as the ruler of the household, the political stage received two new members into the cast of players: the *Landesvater* as the head of state and the *Gottesvater* as the head of the creation and Church. All three of these figures, the 'three pillars of early modern society,' were backed up by Biblical examples typical of the Reformation. The novelty was in the interchangeability

¹⁰³ Wendel, *Le mariage*, 104; Ozment, *When Fathers Ruled*, 37–38; Frensdorff, "Verlöb-nis," 329. For other German and Swiss regions, see Safley, "To Preserve the Marital State," 166; Safley, "Civic Morality," 176; Ozment, *When Fathers Ruled*, 38–39; Safley, *Let No Man Put Asunder*, 32; Witte, "Zwischen Sakrament und Vertrag," 404–405; Stutz, "Zu den ersten Anfängen," 321; Schwarz, *Die Bedeutung der Sippe*, 60–64; Witte, *Law and Protestantism*, 239, note 128; Witte, "Zwischen Sakrament und Vertrag," 404; Ozment, *The Bürgermeister's Daughter*, 139, 159; Roper, "Going to Church," 97–98.

¹⁰⁴ E.g. Bast, *Honor Your Fathers*.

¹⁰⁵ Brady, *Communities, Politics, and Reformation*, 234, 246.

¹⁰⁶ E.g. Friedberg, *Das Recht der Eheschliessung*, 501–523; Gaudemet, *Sociétés et mariage*, 395–403; Hacke, *Women, Sex and Marriage*, 91–118.

of the functions and terms. In popular literature especially, the head of the household and the head of state were used synonymously.¹⁰⁷

While some researchers feel that in certain parts of Europe 'the convergence of church and secular authority' on the importance of parental consent amounted 'to an important ideological shift',¹⁰⁸ others have adopted more temperate tones. While the Protestant courts accented paternal and ecclesiastical authority, the trend was more theoretical as the novel legislation 'neither eliminated the old problems nor gave parents total control' over their children. Rather, the laws increased the parental power of persuasion and gave comfort to parents fearing the folly of the affections of their children. Researchers have observed that the contemporaries felt that the laws helped to secure the foundations of marriage, reduced both domestic friction and individual worry over it, and clarified its conditions.¹⁰⁹

The Swedish Lutheran Church and Parental Consent

The Lutheran Reformation in Sweden caused no revolution either in theory or practice, instead providing the old practice with new justification and authority. The notion that a girl was given away by her parents or guardian to her husband was very strong. 'When she was given to her husband' was a synonymous expression for a woman's marriage in the sixteenth century, even if she was a widow.¹¹⁰ As discussed above, Swedish law safeguarded the position of the marriage guardian, and the passive role allotted to the women in law could leave them at the mercy of their guardians. Indeed, this was not reversed in the sixteenth century. Although bridal consent was necessary, it was considered important that the woman's proper marriage guardian had been consulted and his consent obtained. However, this privilege of guardianship could be lost to other relatives if the guardian was considered negligent or unable to manage the maiden's affairs.¹¹¹

¹⁰⁷ Stolleis, *Geschichte*, 338–342; Harrington, *Reordering marriage*, 39–43. See also Schering Rosenhane's *Oeconomia*, 5.

¹⁰⁸ Roper, "Going to Church," 98.

¹⁰⁹ Ozment, *When Fathers Ruled*, 43.

¹¹⁰ *Iivar Flemingins maakirja*, 87; 17.2.1565, Konung Erik XIV:s nämnds dombok, 177.

¹¹¹ 10.3.1564, Konung Erik XIV:s nämnds dombok, 130–131. See also ULA, UDP, 11.5.1598, 139v.

The Swedish Church followed closely Luther's teaching on the role of parental consent to marriage—indeed especially the main points and discussions in his *On Marriage Matters* were translated into Swedish and Finnish.¹¹² The *Articuli Ordinantiæ* of 1541 relied on royal authority: the King's Majesty required that secular and ecclesiastical law be observed in marriage formation meaning that matrimony against the 'will and consent' of the parents or the closest relative was forbidden. This principle was, the ordinance alleged, expressed in the 'church law' and approved by the emperor.¹¹³ The Church Ordinance of 1571 articulated the same in more ambiguous terms. On one hand, children were forbidden to marry without the consent of their parents or legal guardian, being subject to their will in all things—including marriage—according to God's Commandment. On the other hand, parents were not to use force or compulsion, because forced marriages, in which one spouse was compelled to marry someone towards whom he felt neither inclination nor love, seldom ended well.¹¹⁴

Moreover, the Church Ordinance of 1571 seems to have implied that unions entered into without the knowledge of the parents or the true guardian (*målsman*) could be annulled, unless the couple had consummated their union. The Articles of Vadstena and the Church Ordinance both emphasized the role of the priest in guaranteeing the freedom of marriage. Here the consent of Rebecca (Gen. 24:57–58) was taken as a Biblical example. The clergy was forbidden to marry a couple if either party refused to consent explicitly by saying 'ja', when asked by the priest, or denied that he or she wanted to marry and had been forced to come outside the church door.¹¹⁵ The 1586 Statutes of Örebro made parental consent into a precondition of valid matrimony.¹¹⁶ But generally, double consent was also emphasized by adding to a Finnish translation (1602) of the text on betrothal of the Law of the Realm that to the effect that, in addition to obtaining the consent

¹¹² E.g. Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 16–19.

¹¹³ 19, Georg Normans kyrkoordning på svenska, *BSKH*, 16–17.

¹¹⁴ *KO 1571*, Ordning om Ehtenskapet, 119. See also Circular of the diocese of Växjö 1584(?), *Undersökningar och aktstycken*, 53; *SSA II*, 19.

¹¹⁵ Articles of Vadstena, *BSKH*, 1; *KO 1571*, Ordning om Ehtenskapet, 119. See also Nova Ordinantia, in *KOF I*, 480.

¹¹⁶ Articles of Örebro 1586, *Stiernman 1728–1743*, I, 326; Knuutila, *Avioliitto*, 188.

of the parents of the maiden, she herself had to consent as well as she could not be forced into the union.¹¹⁷

The main difference in comparison with the Catholic dogma was that, in theory, the refusal of consent of the parents precluded the creation of the conjugal bond. In the catechism of Erik Sorolainen, Bishop of Turku, parental consent was considered just as important as the consent of the contracting parties themselves. All had to agree to the match in order for a valid union to be created. In addition, visitation instructions proclaimed that if parents prevented without legitimate cause their adult or major children from marrying, they were to forfeit their power (*amittunt suam auctoritatem*) to the cathedral chapter.¹¹⁸ In practice the evidence from the 1590s would indicate that the Church often sought to mediate between parents and children in such cases. The chapter of Uppsala wished to reconcile a daughter and her father, who refused to 'give his daughter friendship' and had disinherited her because she had married against his will.¹¹⁹ The chapter did not indicate, though, that the marriage was null and void. Jöran Kaspersson had trothplighted Clas the Tailor's daughter without the consent of the parents. The couple promised to solemnize within a fortnight and the question of nullity, due to the lack of parental consent, was not touched.¹²⁰

However, in some cases the reasons for the parental objection were explicitly mentioned. Ingel Abrahamsson had—against his parents' will—betrothed a maid, who was related to him in the third and fourth degrees, but the archbishop disallowed the marriage because of the consanguinity.¹²¹ Nils Ebbasson wanted to marry a woman he had fornicated with despite the adamant objection of his kin (*slecht*), because the woman had previously committed incest. But Nils was determined, and as the marriage could not be prohibited by virtue of God's law, the Church Ordinance or conscience, the couple was allowed to wed after paying a fine for prenuptial fornication.¹²²

Nevertheless, in practice if the ecclesiastical officials considered the trothplight informally performed, this could strengthen the case for annulling any match that had been concluded without parental

¹¹⁷ Mäkelä, *Suvusta perheeseen*, 32. See also Hansen, *Ordnade hushåll*, 73.

¹¹⁸ Holmström, *Eerikki Eerikinpoika Sorolainen*, 395; Söderlind, "Trolloffning," 65.

¹¹⁹ ULA, UDP, 14.2.1595, 43v; ULA, UDP, 14.2.1595, 57v.

¹²⁰ Sörköpings stadh, *V44*, 118. See also ULA, UDP, 23.7.1595, 80; ULA, UDP, 23.6.1595, 53.

¹²¹ Haletorps sochen, *V44*, 9.

¹²² Moratorpa sochen, *V44*, 9. See also Eneby sochen, *V44*, 193.

consent—in some cases although the union had been consummated. Young Lasse had got trothplighted to a wetnurse, who had born him a child and was carrying another, but his parents had been against the trothplight, which had taken place in their absence. Therefore, the chapter of Västerås concluded that if the woman and her kin could persuade Lasse's parents to consent to the marriage, the union could stand. Otherwise, the unlawful trothplight was to be broken, regardless of the original consent of both principal parties and the two children of the couple.¹²³

The terse text of the records does not explain the grounds for this judgement, but an almost similar case from 1596 brings more light to the logic. Anders of Sund, a 'youth', had fornicated with an 'old and faded woman', to whom he had also promised marriage. After this, Anders had started to pursue an ongoing affair with a younger woman. The archbishop observed that there had been no lawful witnesses to the trothplight with the old woman and Anders had acted against the will of his parents and kin. So the marriage (or trothplight) was considered unlawful, particularly considering that he finally came to his better senses and obeyed his guardians. As the old woman also agreed to accept compensation, Anders and the second woman solemnized their marriage promptly.¹²⁴ Thus, at least when young men were concerned, the lack of parental consent had more weight in dissolving the initiated bond when the couple was considered unequal and the formalities of trothplight had not been observed.

We even find masters consenting to the marriage of their servants. When Jochim Swabe, the cook of Duke Karl of Södermanland, wished to marry Elisabeth Larsdotter, the chambermaid of Princess Anna (1568–1625), the duke wrote to his niece to inform her of the plans. He asked her to consent to the union and help to bring the negotiations 'to a good conclusion' so that the marriage could take place.¹²⁵ Even the Church courts could acknowledge the realities of life. When Björn Olofsson's servant Sven Nilsson came to the Stockholm chapter expressing his wish to marry Karin Henriksdotter, Sven was asked to deliver a letter from his master giving his consent to the match.¹²⁶

¹²³ VDA, VDP, 8.12.1596, 27v. See also Nörköpingz stadh, I/44, 199.

¹²⁴ Kullersta sochen, I/44, 190–191.

¹²⁵ RA, Hertig Karls registratur, vol. 23 1596, 4.9.1596.

¹²⁶ SSStA, SDP A I:1, 27.6.1599, 160.

In the sixteenth century the guardians of the bride or groom were still often considered responsible for the betrothal or marriage of the principals and fined for any breach of contract or other offence concerning the betrothal. For example, a father in Pirkkala in Tavastia (Häme) was fined three marks for the interruption of his son's service in the local vicar's household, when he had fetched his son to get married in accordance with the bailiff's command. It may be that the wedding had been delayed and the bride's parents, growing restless, had appealed to the bailiff to have the wedding arranged. In addition, if the parents had betrothed a small child, especially if one partner was considerably older than the other, they could be fined for the deed.¹²⁷

The trend was to exercise greater control. Even grown-up men could refer to their parents' objection to their bride although it is uncertain what to make of the reference when the objection cropped up in the context of men wishing to get out of their engagement or marriage. In many cases it was surely a pretext with which the men sought to influence the ecclesiastical courts, but in some the genuine wish to respect the wishes of parents may have been involved. The Gävle burgher who had delayed his wedding for nine years gave his mother's objection as a reason for putting it off for such a very long time.¹²⁸ Olof Eriksson, a widower, had after his wife's death made his maid with child and promised her marriage 'against the counsel, will and consent of his father and mother'. Then Olof had a change of heart caused by, as was claimed, his repentance for disobeying his parents. So he backed out of his promise, paid the fines and gave the maid and her father compensation. Olof could not be forced to marry the woman, but he was subjected to ecclesiastical censure 'for fornicating with her in his own bread'.¹²⁹

The lack of parental consent could be used by men and women alike as a legal strategy to rid themselves of unions that had become inconvenient for them for some other reason. Strånge Månsson of Näs was in and out of the Uppsala cathedral chapter, because he was persistently arguing with his betrothed wife Karin. Perhaps as a last resort, his mother testified that even if her late husband and she had consented to the marriage to Karin, she had since changed her

¹²⁷ Mäkelä, *Suvusta perheeseen*, 98.

¹²⁸ ULA, UDP, 23.9.1598, 127. See also ULA, UDP, 29.5.1594, 23.

¹²⁹ Förlösa sochen, *V44*, 19–20.

mind.¹³⁰ The court was not affected by this change of heart, as the maternal opposition had taken place long after initial consent. Yet in practice, the consent of the parents or next-of-kin was considered not only relevant but also important, especially if the trothplight had not been yet followed by intercourse.¹³¹

For England, it has been suggested that, in moving more determinedly against clandestine contracts, the Church in fact also ‘strengthened the hand of parents’ wishing to control their children’s marriages.¹³² This certainly describes also the Swedish situation aptly. The possibility of disinheriting women who chose their own marriage partners remained in post-Reformation Sweden. In a dispute from 1602 the marriages of two generations were discussed in connection with the maternal inheritance of Jöran Sigfridsson’s (Stengafvel) wife Bengta Andersdotter. Not only had Bengta’s mother married a commoner, but it was claimed that her noble grandmother Ingeborg had never consented to Jöran’s marriage to Bengta. Letters were presented in court in which Ingeborg expressed her wish that Jöran would take his gifts back, and because of this lack of consent she willed her landed property to her other grandchildren. Jöran defended himself by claiming that Ingeborg had indeed consented to the match: the betrothal had taken place at Arneberg, where Ingeborg lived, and she had been present at the ceremony.¹³³ In another case from 1614 Anna Brömsdotter of Grafby forgave her daughter Margareta Månsson (Stiernbielke) her unauthorized marriage to Jöran Andersson, a commoner, with ‘a motherly heart’. This included restoration of the complete inheritance rights as to both land and chattels as Margareta was to inherit as much as her sister Helia.¹³⁴ Widows were allowed to choose for themselves without risking the loss their inheritance: as they had once been emancipated from their parents’ power by marriage, they were free from guardianship even after the death of their husbands.¹³⁵

¹³⁰ E.g. ULA, UDP, 10.9.1595, 85v.

¹³¹ Pylkkänen, *Puoli vuodetta*, 243–244, 373; Aalto, *Kirkko ja kruunu*, 194–195.

¹³² Ingram, *Church Courts*, 210–212.

¹³³ 26.6.1602, *SST från år 1592 IV*, 244–247. On the family, see Schlegel – Klingspor, *Den med sköldebref förlånade*, 280–281.

¹³⁴ *Samlingar och anteckningar till en beskrifning öfver Ydre härad I*, doc. 225, 363–364. See also 18.9.1562, Konung Eriks XIV:s nämnds dombok, 52; Korpiola, “The Fall and Restoration.”

¹³⁵ *Vår äldsta kommentar*, G 3, 27.

Despite the possibility of disinheriting daughters and the Church's insistence that parental consent was necessary, there was a growing sentiment, at least among the nobility, that even sons ought to obtain their guardians' consent to their marriage. Parental consent was necessary, indeed justice required it in order to honour the parents who had undergone so much trouble in raising their children.¹³⁶ There seems to have some pressure to extend the sanction of disinheritance to sons who married in disregard of their parents' wishes—especially if they married commoners—but in 1608 this interpretation was not yet accepted.¹³⁷ As long as the law provided no means for a more efficient control of noble sons, their parents could not do much except express their disapproval, but by 1630 this perception had to some extent changed in learned juridical literature.¹³⁸

As argued above, Swedish medieval law provided no actual recourses to maidens whose fathers or marriage guardians refused to contract them in honourable matrimony. This disadvantageous situation remained unaltered after the Reformation although Luther, for one, recommended that clergy and secular authorities provide positive recourse in such cases. In Luther's example, a daughter wished to marry, but the parent refused because he wished to profit from her services as an unpaid maid. Luther denounced such action of 'a crude peasant' as 'unpaternal malice' and caprice, advising instead that the children turn to good friends, a priest or the secular authorities. If the proposed match was indeed honourable and advantageous and parental opposition unreasonable, the authorities could side with the child and force the parent into granting his permission. If a gaol sentence did not soften him, he could lose his parental rights.¹³⁹ As a result, many Lutheran jurists and church ordinances insisted that children could have the matter investigated at the local court. In cases of gross abuse of paternal authority, the father could be fined or imprisoned.¹⁴⁰ The Swedish Nova Ordinantia (1575) forbade parents to abuse their powers and advised

¹³⁶ *Vår äldsta kommentar*, G 3, 26.

¹³⁷ *Johan Skyttes kommentar*, G, Ca 3.1, 25.

¹³⁸ *Vår äldsta kommentar*, G 3, 27.

¹³⁹ Martin Luther, "On Marriage Matters" [1530], 308–309; Witte, *Law and Protestantism*, 235–236.

¹⁴⁰ Witte, *Law and Protestantism*, 238–239. See also Witte, "Zwischen Sakrament und Vertrag," 404–405.

children to turn to the clergy, royal governors and town councils for assistance.¹⁴¹ However, no clear remedies were introduced.

As the plight of maidens in this situation moved neither the Church nor the secular authorities, such 'crude' cases continued to take place. Klaus Eriksson Fleming (ca. 1535–1597), the most powerful man in late sixteenth-century Finland, coldly refused to pursue the marriage plans of his kinswomen in order to advance his own gain. As their guardian, he administered their property and revenues, which on their marriage would have passed to their husbands.¹⁴² The chapter of Linköping also dissolved several marriages and betrothals where one party claimed having been forced to the union by his or her parents or alternatively by the fiancée's family. In 1608, Måns of Herbergshult complained to the chapter that his fiancée did not wish to fulfil the marriage despite their trothplight. He had left her, however, because she could not feel any inclination towards him and indeed, she claimed that she had been 'scared' by her father to accept Måns. She had, however, earlier pledged marriage to Nils and after Måns's departure, they had intercourse conceiving a child. The chapter gave her permission to solemnize with Nils, but she was fined one daler, she lost the gifts she had given Måns and those he had given her. Måns was allowed to marry the widow he wished to court.¹⁴³

After his accession to the throne as King Charles IX, Duke Karl initiated a scheme of reforming the Swedish medieval laws. His law proposal included a section of disinheriting all headstrong children who refused to follow their parents' counsel and disobeyed the divine Commandment to obey one's parents.¹⁴⁴ A daughter who 'did not know what was best for her' and refused the respectable suitor proposed by her parents could be disinherited by them. If an orphan married a person to disoblige her brothers, sisters or other relatives, she risked losing the inheritance rights after these other relatives.¹⁴⁵ These sections would have signified a considerable extension to the medieval laws that empowered only parents to disinherit their daughters who had married or fornicated against their will. Nevertheless, the royal proposal did not

¹⁴¹ Nova Ordinantia, in *KOF I*, 481.

¹⁴² Lahtinen, "Veljet ja sisaret," 117–118; Lahtinen, "Omaisuuatta," 362–363; Lahtinen, *Sopeutuvat*, 158–165.

¹⁴³ VaLA, LDP, 30? 6.1608, 34. See also e.g. VaLA, LDP, 13.5.1600, 1v; VaLA, LDP, 29.6.1601, 6v; VaLA, LDP, 11.5.1607, 25v; VaLA, LDP, 28.6.1608, 34.

¹⁴⁴ Kk, appendix, Carl den Niondes lagförslag, *Lagförslag i Carl den Niondes tid*, 110.

¹⁴⁵ G 2, Carl den Niondes lagförslag, *Lagförslag i Carl den Niondes tid*, 119–120.

constitute parental tyranny: both parents and children had to consent to the marriage and parents had to consider that the proposed groom was not beneath their children. If the parents (or guardian) knew that the suitor they wished their daughter to marry was disreputable, evil or he had a ‘dangerous illness’, they could not disinherit her for refusing him. Instead, they were fined forty marks. Moreover, if parents or guardians were found to have maliciously hindered a marriage, the child could appeal to the king. The king, always in ‘search after the truth’—had the power to authorize the marriage.¹⁴⁶

After the law reform failed the royal authorization emerged in the privileges of the nobility of 1622. Noble men and women who were penalized for their unauthorized marriages especially with commoners were granted the privilege to have the matter resolved by the king.¹⁴⁷ Ironically, the bill of the so-called Rosengren Commission was much more traditional even on this issue. The consent of both the parties and bride’s parents was necessary for a valid trothplight, and if a maiden married or fornicated without parental consent, she lost her inheritance rights. A noble maiden lost also her tax exemption.¹⁴⁸ The Commission would have expanded the adult maiden’s legal capacity to manage her inheritance under the supervision of her legal guardian. In addition, the legal guardian would not have been able to prevent a nubile maiden from marrying a respectable suitor who was her social equal (*wederlijke*). She could appeal to her other relatives, and if the refusal of the legal guardian was considered unreasonable, she could marry with her other relatives’ consent without being disinherited. Nevertheless, following the example of Roman law, a woman under twenty-five who turned down respectable suitors and lived in ‘whoredom’ could be disinherited.¹⁴⁹

This testifies to the Swedish seventeenth-century trend towards increased patriarchalism.¹⁵⁰

¹⁴⁶ G 2, Carl den Niondes lagförslag, *Lagförslag i Carl den Niondes tid*, 118–120.

¹⁴⁷ Resumé of the privileges of the nobility (7.5.1622), *Kongl. Stadgar 1528–1701*, 218; Pietilä, “Kirkon tuomiovalta,” 108–109.

¹⁴⁸ G 3, Det Rosengrenska lagförslaget, *Lagförslag i Carl den Niondes tid*, 304–305.

¹⁴⁹ G 1, G 3, Ä 2, Det Rosengrenska lagförslaget, *Lagförslag i Carl den Niondes tid*, 302, 305, 320–321.

¹⁵⁰ See also Korpiola, “Marrying off,” esp. 9–26.

4.4 *Trothplight, Betrothal and Consummation: Return to Formality*

Against Clandestinity: Engagements in Protestant Ideology

Martin Luther elucidated the Lutheran marriage regime in his influential treatise *On Marriage Matters* in which he launched an attack against the ‘tomfoolery’ or *Narrenspiel* of the canonical distinctions between the words of marriage: *sponsalia de praesenti* and *de futuro*. These were, in his opinion, deceptive at best because in the German language the verb ‘wollen’ was used both to denote present willing (I want to have you) and as an auxiliary verb in the future tense (I will take you). While the phrase was understood as a future-tense contract by the canon law courts, it ought to be construed to mean the present tense, claimed Luther.¹⁵¹ In his own language, however, Luther openly equated public ‘betrothals’, entered into in the presence of the parents or guardians, and *sponsalia de praesenti* although this was not the traditional canonical interpretation. At one stage Luther went as far as to argue that only when a condition was added to the marriage vow could it be interpreted *de futuro*.¹⁵²

Public betrothals at the church door, preferably performed by a priest, were to be as binding as matrimony itself and they were to take place using words in the present tense. This point of departure in mind, it is understandable that the public betrothal was so binding that intercourse with another after it had validly been performed was to be sentenced as adultery. Otherwise, Luther was an adherent of a prohibition of secret engagements. For reasons of proof, a public engagement was always preferred even if a prior secret contract with gifts or pledges was claimed. But if several public engagements had taken place, the first took precedence to the second.¹⁵³ Later Luther retreated somewhat from his strong tendency to merge betrothal and the exchange of *de praesenti* vows. He acknowledged their distinction but insisted that the interval between the two events be brief: e.g. advising, in one of his table talks, betrothed couples to consummate and solemnize their union

¹⁵¹ Martin Luther, “On Marriage Matters” [1530], 274–275; Lähdenmäki, *Sexus und Ehe*, 100–101.

¹⁵² Martin Luther, “On Marriage Matters” [1530], 274–275; Lähdenmäki, *Sexus und Ehe*, 101–102. See also Dieterich, *Das protestantische Eherecht*, 121.

¹⁵³ Martin Luther, “The Estate of Marriage” [1522], 29; Martin Luther, “On Marriage Matters” [1530], 267, 275, 281–283, 289, 297–300; Lähdenmäki, *Sexus und Ehe*, 105–107.

forthwith.¹⁵⁴ The majority of the Evangelical jurists came to reject or diminish the distinction between present-tense consent and a public unconditional betrothal. Several church ordinances spoke interchangeably of betrothal (*Verlöbniß*) and marriage (*Ehe*), while the public betrothal was considered to constitute marriage. The interval between betrothal and marriage was also to be kept as short as possible.¹⁵⁵

An example of practical applications of this dogma is the Zürich ordinance of 1525, which made two respectable witnesses a precondition of a valid marriage. These could also be parents or guardians, without whose consent the marriage of minors were invalid. In addition, such a licit and valid marriage had to be publicly witnessed and recorded in church within a fortnight of the initial marriage vows.¹⁵⁶ Some German church ordinances, like that of Goslar from 1555, ordained that if either party ran away from the other without an acceptable reason after having been publicly engaged (*verlobet*), the matter was treated as if the couple had been married, even without consummation (*ehelichen Beylager*).¹⁵⁷

In general the Protestant lands came to prefer public vows to prior clandestine promises, unless the prior clandestine vows had been consummated, but the importance attached to the public engagement is revealed in a sexual *faux pas* of a fiancé(e) being deemed adultery.¹⁵⁸ In Goslar if one, after a public betrothal, contracted with another and intercourse followed, the matter was treated as adultery both in the Church's spiritual and the secular forum. In addition, the innocent party was allowed to marry another because of the offence, while the lapsed fiancé(e) could marry the partner-in-sin only if the latter had been unaware of the first commitment. However, had both engagement and consummation (*Beyschlaffen*) taken place knowingly, the partner was punished by the secular authorities. Moreover, as the public betrothal was regarded as constituting marriage, the party refusing to solemnize the union in church could be forced by the temporal sword to follow through. The solemnization was the confirmation of an already con-

¹⁵⁴ Witte, *Law and Protestantism*, 234; Friedberg, *Das Recht der Eheschliessung*, 277.

¹⁵⁵ Witte, *Law and Protestantism*, 237.

¹⁵⁶ Ozment, *When Fathers Ruled*, 36. See also Witte, "Zwischen Sakrament und Vertrag," 404–405.

¹⁵⁷ Friedberg, *Das Recht der Eheschliessung*, 220.

¹⁵⁸ Harrington, *Reordering marriage*, 201, 204–205; Witte, *Law and Protestantism*, 237–238. For medieval examples, see Donahue, *Law, Marriage, and Society*, 323.

tracted marriage, and the refusing party could be incarcerated in order to make him change his mind.¹⁵⁹

According to Luther, a proven and consummated secret betrothal was to take precedence over any subsequent public engagement, provided that the authorities did not punish the seducer. The possibility to marry naturally depended on the parents of the defiled girl and their consent. On the other hand, if the seducer denied the first engagement or intercourse under oath, the matter was to rest on his conscience. The second, public betrothal was to be considered valid, and the first woman was to be permitted to contract with another although she knew her lover had perjured himself. If, later, the perjurer was taken by remorse for his crimes, he could not abandon the second woman, but instead had to make amends to the first woman and her family, as well as be reconciled to them.¹⁶⁰ The solution chosen in the Zürich marriage ordinance was that any single man who had deflowered a woman upon a promise of marriage was forced to provide her a dowry, borrowing it from Jews if his parents refused to provide it, and marry her. The regime in Nuremberg was quite draconian: if the couple had made serious marriage vows before the intercourse, the couple was forced to marry despite the man's objections. If necessary, guards escorted the couple to the altar and an official representing the parties gave his consent in lieu of them.¹⁶¹ Such extreme measures, however, were only seldom adopted.

But even in England, where the medieval canon law of marriage stayed largely intact until Lord Hardwicke's Marriage Act against clandestine marriage in 1753, the trend was to discourage clandestine unions by indirect means. The legal development was interconnected with the number of litigation: the number of contract cases was in decline already by the end of the Middle Ages and while there may have been an increase in the sixteenth century, the incidence of such causes in the early seventeenth century was relatively even smaller.¹⁶² The principles were being systematically excommunicated for the clandestinity and they as well as the witnesses were increasing being prosecuted *ex officio*. Moreover, witnesses might be disallowed merely for

¹⁵⁹ Friedberg, *Das Recht der Eheschliessung*, 220–222, 228–229.

¹⁶⁰ Martin Luther, "The Estate of Marriage" [1522], 29; Martin Luther, "On Marriage Matters" [1530], 282–285, 290–293.

¹⁶¹ Ozment, *When Fathers Ruled*, 34.

¹⁶² Ingram, "Spousals Litigation," 42–43.

their inability to testify, being *ipso facto* excommunicates for participating at clandestine marriages. Secret unions became thus more difficult to prove.¹⁶³ Some courts were reluctant to enforce clandestine marriages if this meant the dissolution of subsequent, publicly solemnized and consummated unions.¹⁶⁴

English ecclesiastical courts displayed a reluctance to confirm disputed marriage contracts partly due to a growing perception among ecclesiastical lawyers and judges that solemnization *in facie ecclesiae* was the normal and acceptable mode of marriage formation. Even more significantly, a church wedding was recognized as ‘the only satisfactory guarantee of a socially and legally acceptable marriage’, a trend probably strengthened by a growing hostility towards bastards and bastard-bearers, supported by the parishes due to poverty and population pressure. The ‘changed conditions made it reasonable for the courts to adjudicate in favour of disputed contracts only when the issues were crystal clear’.¹⁶⁵

Betrothal, Trothplight and Matrimony: Upholding the Principle of Presumed Marriage

As discussed above, a new legal institution, trothplight, appeared in late medieval Sweden as the local equivalent of the canonical *sponsalia de futuro*. The introduction of this new legal instrument partly as an alternative to, partly as a substitute for the traditional betrothal resulted in a confusion in the vernacular terminology. The sixteenth-century authorities used the words betroth (*festa*) and pledge one’s troth (*trolova*) vaguely and almost interchangeably. Brides and grooms, husbands and wives could be called by several expressions: trothplighted wife, woman or bridegroom (*trolovad hustru/trolofuad Quinna/trolofuade festemann*) or lawfully betrothed woman (*lagfest quinna*).

Yet despite some confusion of terminology, in its essence the sixteenth-century *trolovning* described that the parties had pledged their troth to each other. *Fästning*, however, implied the presence of more ritualized formalities and witnesses. A third party, usually the bride’s father or marriage guardian, actually performed the act of betrothing the bride to the groom. As in the Middle Ages, the person officiating

¹⁶³ Helmholz, *Roman canon law*, 71–73; Ingram, “Spousals Litigation,” 56–57. Cf. Ingram (“Spousals Litigation,”) who claims that witnesses were only treated leniently.

¹⁶⁴ Helmholz, *Roman canon law*, 73.

¹⁶⁵ Ingram, “Spousals Litigation,” 52–57; Ingram, *Church Courts*, 205–206, 208–210.

at the trothplight was often an older man, such as the father or master of the bride. The master of ceremonies asked the couple the questions, e.g. whether they wanted to live and die together. The assent of both was confirmed with handclapping in the name of the holy Trinity and the gift of a ring or other valuables from the groom to the bride. The indissolubility of the contract was especially emphasized. Even if priests were present as witnesses, they did not necessarily assume the traditionally active role of the marriage guardian.¹⁶⁶

This formal legal act was not to be repeated and the cleric performing the solemnization was only to remind the couple of the words expressed at the betrothal. This implies that the betrothal was conceived as an act in which express consent was exchanged and in which the consent need not be repeated. The wedding formula expressly stated that betrothal actually constituted marriage. The priest began by saying to the couple: 'As you have *through a lawful betrothal* entered the . . . estate, that is Matrimony'.¹⁶⁷ The priest's speech could be followed—where it was customary—by the groom's giving the bride a ring, which he himself or the priest put on her finger. However, no additional words or ceremonies were needed.¹⁶⁸ The priests were to use the formula in the Swedish manual whenever they joined couples together, whether marrying (*wiya*) or blessing.¹⁶⁹ Therefore, if the exchange of consent had already taken place it was not to be repeated.

Although Luther and his followers tended to equate betrothal and marriage, this did not quite fit the Swedish basic duality although the betrothal was more important than the wedding. Instead, the Church Ordinance of 1571 held that if a trothplight had taken place with witnesses present, the statutory gifts given, and intercourse had taken place, the union had to be reckoned valid before God, albeit that lawful betrothal and solemnization had not succeeded. But then again, trothplight without consummation did not have a similar effect.¹⁷⁰ In fact, therefore, in 1571 the Swedish Lutheran Church abandoned the medieval doctrine of consent only and set down prerequisites of a valid

¹⁶⁶ Söderlind, "Svenska," 9–10; Hafström, "Från fästning med fastar," 172. See also Ingram, *Church Courts*, 196.

¹⁶⁷ *KO 1571*, Ordning om Ehtenskapet, 121. Italics mine.

¹⁶⁸ *KO 1571*, Ordning om Ehtenskapet, 121–122. See also Kihlaamisen tapa (1652–1657, Manual for Engagements) in Perälä, *Eskil Petraeus*, 273.

¹⁶⁹ *KO 1571*, Ordning om Ehtenskapet, 122.

¹⁷⁰ *KO 1571*, Ordning om Ehtenskapet, 126–127. See also Om åthskildnat i ehtenskap, art. 7, *Biskop J. Rudbeckius' kyrkio-stadgar*, 22.

and enforceable trothplight: witnesses and gifts. This change signified a return to the older formal Swedish legal tradition and brought the betrothal and trothplight closer to each other as both required certain formalities. In cases relating to the enforcement or dissolution of engagements, the ecclesiastical courts now began first to investigate the lawfulness of the betrothal as an ancillary question. If not, this changed the nature of the case altogether. For example, when Lasse of Torpa wished to break his trothplight, it was discovered to be unlawful and so, without further ado, the couple was judged free to contract with third persons.¹⁷¹

As to lawful trothplights followed by intercourse, the Church Ordinance confirmed the canonical principle of *matrimonium presumptum*, namely, that future-tense vows were transformed into marriage through subsequent consummation. This doctrine had also been approved by Luther. When the Swedish church courts discovered such instances, the parties were pressured to solemnize although the union was indissoluble in any case. For example, Archbishop Abraham Angermannus's famous visitation records of 1596 mention numerous couples living 'unsolemnized' together, and solemnization immediately followed. Scholars have failed to understand that the records refer to betrothed or trothplighted couples, who had already had sexual intercourse. Thus the engagement could no longer be broken. Such couples were not forced to marry each other, but rather pressured to solemnize their already contracted marriages.¹⁷² For example, in the town of Norrköping, the visitation records mention twenty-two 'unsolemnized' (*owigde*) couples, probably living together married but without solemnization. Solemnization was immediately performed for twelve couples, while six couples escaped solemnization or penalty altogether simply by not being present at the visitation. The remaining four couples promised to solemnize later, and some pledges and conditional penalty payments were imposed on them. Two of these couples promised to solemnize when their wives were churched.¹⁷³ Obviously, at least these two men were definitely considered already married through trothplight and consummation. Likewise, Olof Helsing had had intercourse with a widow, to whom

¹⁷¹ E.g. Wederstaa sochen, *VAA*, 128. See also e.g. VaLA, LDP, 29.6.1600, 3, 3v; Hansen, *Ordnade hushäll*, 70–73.

¹⁷² E.g. Kjällerström, *Guds och Sveriges lag*, 79–80; Söderlind, "Trolloffning," 71; Sundin, *För Gud*, 130; Gaunt, *Familjeliv*, 70–71.

¹⁷³ Norrköpingz stadh, *VAA*, 198.

he had promised marriage and whom he wanted to break with. As the trothplight was considered lawful, and as it had taken place in the presence of the priest and good men, he was pronounced the widow's husband.¹⁷⁴

Such cases also appeared in ecclesiastical court practice. For example, in two cases from 1598 the Stockholm chapter elaborately investigated whether two trothplights were valid and whether they had been transformed into marriages by subsequent intercourse. The chapter observed that according to the Church Ordinance, when trothplight had been performed with lawful gifts and in the presence of witnesses, subsequent intercourse constituted matrimony. In the second case, flax-weaver Johan Persson had trothplighted Sander the Flax-weaver's daughter and impregnated her. Johan admitted the trothplight and the gift of a ring. The trothplight has also been 'lawfully [performed] in the presence of good and adult witnesses' as the girl's parents and Johan's master, Nils the Flax-weaver, had been present. Moreover, in a letter to Sander, Johan referred to her as his 'heart's dear bride'. The chapter concluded that the couple were married both according to God's word and the Church Ordinance and the marriage was to be solemnized.¹⁷⁵ Peder Henriksson of Almunge had trothplighted the widow, Barbro of Rasbo, in the presence of 'good men'. Then he had taken her into his house and she had been with him 'in bed and board' (*hooss honom i säng och sätte*) in his house the whole winter. In the spring, however, she had moved out. The couple was decidedly married and the parties were reconciled, promising to celebrate their wedding on the feast of Saint Martin.¹⁷⁶

In the secular court unwitnessed, word-against-word cases were commonly treated as fornication or violation of a virgin as there had been no lawful trothplight. The ecclesiastical court could then impose public penance on the fornicators. Elisabet, daughter of former royal bailiff Filip Kern, claimed that Udde Svensson, a scribe, had promised marriage before seducing her and getting her with child. Udde denied the promise of marriage and the ensuing investigation of his letters and her replies showed that there was no valid marriage. Elisabet Kern was exhorted to repent her sin and forgive Udde although she would

¹⁷⁴ Wånga sochen, *VA4*, 188.

¹⁷⁵ SStA, SDP A I:1, 3.5.1598, 124–125.

¹⁷⁶ ULA, UDP, 10.9.1595, 85v. See also ULA, UDP, 20.9.1595, 87v; ULA, UDP, 7.10.1596, 128. See also *Tingsprotokoll för Njurunda*, 74–75, 82–83.

pursue the matter in the secular forum. She was allowed to be churched apparently privately, and she promised not to sin again on pain of standing naked at the churchdoor and being fustigated.¹⁷⁷

Courts did also put pressure on men where they saw the women to be in the right. A peasant from Vaxala had had a relationship with his maidservant, with whom he had two children and to whom he had promised marriage. He seemed not to have wished to take the marriage process further, as he agreed to pledge her his troth in the presence of the chapter (*in conspectu capitularium*) only after long and serious admonitions. Finally, he promised to arrange the wedding (*göra Bryllöp*) before the following Michelmas.¹⁷⁸ The Uppsala chapter was successful also in mediating between Erik the Shoemaker and Majsa, who had been pursuing an affair for three years. Meanwhile she had had intercourse with her master's stepson, but the child she had given birth to in the summer was the shoemaker's child. The chapter reasoned Erik into promising to marry Majsa and they confirmed with handclasping that that were married and that they solemnize the union before the following feast of Martin. Majsa's lover, however, was to be absolved publicly and fustigated privately.¹⁷⁹ Similarly the bishop of Västerås and his chapter insisted occasionally that the man, wishing to refute the claim that he had promised to marry a woman, had to produce the testimony of six compurgators.¹⁸⁰

As observed above, the trothplight and betrothal were alternatives but also complementary. Some couples preferred to have both rituals performed before advancing towards ecclesiastical solemnization. For example Erik Bengtsson, who later wanted to break off the union, and Margrethe Larsdotter had first been trothplighted. Then Margrethe had fornicated with another man, but although knowing of her offence Erik had freely betrothed her six years prior to the court case.¹⁸¹ At another instance, Malin Larsdotter was unwilling to marry her fiancé Ingjel Matsson, from whom she had run away five times. When she was first trothplighted to him, she had escaped into the forest, but her parents had explained her absence by her being out in order to retrieve the cattle. She had been present and had not objected, though, when Ingjel and

¹⁷⁷ SStA, SDP A I:1, 6.2.1600, 159. See also SStA, SDP A I:1, 3.8.1596, 50.

¹⁷⁸ ULA, UDP, 24.5.1593, 1v.

¹⁷⁹ ULA, UDP, 21.8.1594, 28v.

¹⁸⁰ VDA, VDP A I:1, 29.3.1595, 2.

¹⁸¹ ULA, UDP, 16.3.1599, 153.

his friends had come to betroth her. She had evidently then accepted the gifts she had later returned.¹⁸² Thus, Malin was first trothplighted *in absentia*, and later betrothed while participating.

Even after the Reformation, the bindingness of betrothals followed by intercourse was upheld in law, but the significance of a promise of marriage after sexual intercourse became unclear in post-Reformation Sweden. According to canon law, only if intercourse took place *after* the exchange of future-tense consent did the two acts constitute marriage, but intercourse preceding the exchange of future-tense consent made only an engagement. In present-tense consent, intercourse had played no role in the first place. As Laurentius Petri had pointed out, betrothal followed by intercourse made for a true marriage in the eyes of God. The couple could not be separated although ecclesiastical solemnization was omitted, and a fiancé deserting his bride was to be punished according to the law. In many countries, Petri explained, matrimony was validly made in front of a public notary and two witnesses although solemnization was desirable.¹⁸³

The canonical distinctions seem, however, to have become blurred in Swedish sixteenth-century ecclesiastical court practice. It sufficed if a man gave his promise to a woman he had earlier had sex with. Johan Hansson, a peasant's son from Fundbo, had impregnated a maid and betrothed her when she went into labour. However, now he wanted to break off the betrothal. The chapter insisted that he 'consummate his marriage' (*han sitt äktenskap fullborda skulle*) by solemnization, and his parents promised to arrange the wedding before the following Martin's day.¹⁸⁴ As in many other similar cases, the groom and his parents were reluctant to take the final steps in solemnizing the marriage and completing the marriage process: in April the next year they had still not arranged the wedding and the local priest was ordered by the chapter to put the three under interdict as perjurers.¹⁸⁵

Yet, in cases in which the promise to marry (followed by intercourse) had not been given at a betrothal or a formal trothplight, the promise seems to have been revocable—although neither the promise of

¹⁸² ULA, UDP, 13.10.1596, 128v.

¹⁸³ Laurentius Petri's explanation of the Ordinance of Västerås, *HSRH I*, 95; Statute of Västerås 1528, *HSRH I*, 166.

¹⁸⁴ ULA, UDP, 24.5.1593, 1v. See also 10.7.1599 Österrekarne, *Sörmländska härads domböcker från 1500-talet*, 141.

¹⁸⁵ ULA, UDP, Aprilis 1594, 15v.

marriage nor the intercourse was doubted. In such cases the man was usually fined for violation of a virgin in addition to the ecclesiastical penance. In Wärmö in 1608 Michel Olufsson refused to marry the widow Ingeborg, to whom he had pledged his troth and with whom he had afterwards had intercourse. Michel was therefore fined twenty marks for violating the widow (*enkekränckningh*).¹⁸⁶ In Turku in 1624 Johan the Bookbinder had fornicated with Ursula, daughter of Oluf Halsse for over eighteen months (*i halftannat år*) under promise of marriage. When the court asked whether he wished to marry her, Johan explained that should there not be such evil rumours circulating about her, and if she and her parents did not verbally abuse him so much, he would have been willing to wed her. Under the circumstances he would rather be 'in the brook than in the river', meaning that he rather paid a forty-mark fine for violating her and forfeited the gifts he had given her than married her.¹⁸⁷

This enabled couples to use a more informal trothplight as a sort of interlude to marriage or breaking off. Although a fine or compensation had to be paid for breaking off, the trial union had not turned into marriage despite sexual intercourse. On the other hand, the women were not ostracized for consenting to intercourse under promise of marriage. If they became pregnant, they would get child support and financial compensation for their loss of virginity, probably without fatal damage to their appeal as potential marriage partners. In addition, the Reformation naturally re-introduced divorce in Sweden. Through a divorce even a consummated betrothal, equalling marriage, could be broken. While in such cases the bishops normally insisted on the usual grounds for divorce, mainly adultery or malicious desertion, this undoubtedly added to the flexibility of the Swedish marriage system as thereafter the marriage process could be terminated at any stage.

The marital escapades of Per of Banckaberg demonstrate this. Per had pledged his troth to a widow and had had intercourse with her. Then he had dismissed her and started a relationship with another woman. With this second woman he had since solemnized his marriage, claiming to the officiating priest that he had only been fornicating with the widow without any promise of marriage. The secular court

¹⁸⁶ 6.2.1608, *Uppländska domböcker 1608*, 11. See also 18.10.1608, *ibid.*, 16.

¹⁸⁷ 18.8.1624, *ÅSD 1624–1625*, 49–50. See also 23.8.1624, *ÅSD 1624–1625*, 51–52.

acknowledged the first woman as Per's wife and the second woman, who had known of the first trothplight, as an adulteress. For his villainous behaviour towards the widow, Per was, moreover, fustigated, receiving thirty-nine lashes. Per wished, however, to keep the second woman as his wife as the widow by on no accounts wished to remain with him. This was allowed on three conditions: that the new couple perform public penance, that they settle in another region where they were unknown and that he wanted to marry her because he wished to legitimate their child and not out of love.¹⁸⁸

'Ecclesiasticizing' the Betrothal and Trothplighting

The Lutheran Church had to tackle the same problem the Catholic Church had faced. The reluctance of couples to have their banns read and the union solemnized made the possibility of controlling the impediments of the union much slighter. Therefore, attempts continued to be made in order to have the wedding *in facie ecclesiae* a standard stage in the Swedish marriage process. Yet, the Church's notion of the nature of the betrothal was somewhat ambiguous. On one hand, they were dissoluble upon the insistence on either party. On the other hand, they represented more than only promises to marry in the future. Although the Church strongly supported ecclesiastical betrothals soon followed by solemnization, it conceded that private betrothals were valid if made according to the rituals prescribed in secular law.

As people lacked special incentives to have a church wedding, couples were not necessarily in a hurry to have it performed. Some omitted it altogether, while others had to be prodded or put under considerable pressure by the Church before the couple agreed to solemnize. However, the preference of public betrothals was strongly emphasized by the clergy. The Finnish Reformer Mikael Agricola thought that young people did not respect marriage enough but considered it a joke and a laughing matter. In his opinion, both betrothal and solemnization had to be public.¹⁸⁹

The Articles of Vadstena recommended that betrothals always take place at the church door or the vestry, but an exception could be made at the discretion of the priest if the couple was wealthy or

¹⁸⁸ Fliserydh sochen, *VA4*, 56.

¹⁸⁹ Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 15–16.

noble (*merkeligit folck*) and invited the priest to perform the ritual in the home. Solemnization could only exceptionally take place at home if the couple was prevented from coming to the church ‘for especially good reasons or because of a hindrance’.¹⁹⁰ Particularly the nobility was willing to enjoy the privacy of the home, and the wealthy began to emulate them.¹⁹¹

As discussed above, the Catholic Church’s notion of formless *sponsalia de futuro* and *de praesenti* had never corresponded to the Swedish custom of formal betrothal and wedding. The discarding of this distinction seems to have been spontaneous rather than influenced by Luther’s criticism. Post-Reformation Swedish clerics were able to satisfy the inherent thirst for formalism with the norms of the 1571 Church Ordinance. The trothplight as developed in the course of the sixteenth century became a *mélange* of the *sponsalia de futuro* and the formal betrothal. The twin requirement of trothplighting gifts and presence of two unrelated witnesses became a condition *sine qua non*, without which a trothplight could be pronounced invalid although consummation had occurred. The validity of a trothplight depended on its provability before the chapter by fulfilling both requirements.¹⁹² In practice, disputed causes alleging an unsolemnized and informal contract by present-tense words disappeared in post-Reformation Sweden.¹⁹³

The Church’s efforts to control the making of marriage were not very successful because of the custom of private betrothal, which was the most important factor in making a marriage. Therefore, as we saw above, the late fifteenth-century the Swedish church had started to mention the possibility of having betrothals performed by the priest as an alternative to the secular ceremony.¹⁹⁴ In medieval Sweden, the ecclesiastical betrothal was not a proper alternative to the secular betrothal, nor did the Church manage to have the secular ceremony replaced by the ecclesiastical one in the early modern period. According to the Manual of 1529, a secular betrothal was no impediment for the priest to perform the engagement at the church door or in the sacristy. The ceremony included the blessing of the engagement ring and putting

¹⁹⁰ Articles of Vadstena, *BSKH*, 2; *KO 1571*, Ordning om Ehtenskapet, 122.

¹⁹¹ 9.8.1643, *Kulturella interiörer*, 118. See also *CEAP*, 252, 521; Synod of Uppsala 1649, *SS4 I*, 89.

¹⁹² *KO 1571*, Ordning om Ehtenskapet, 126–127.

¹⁹³ Cf. Pietilä, “Kirkon tuomiovalta,” 137.

¹⁹⁴ See Chapter 3.3 above.

the ring first on the bride's forefinger, then on her middle finger and finally on her ring finger.¹⁹⁵ While it is doubtful whether this practice had had much success before the onset of the Reformation, the Swedish Lutheran Church continued to discourage clandestine betrothals and marriages. As discussed above, Luther insisted on public betrothals and most reformed regions followed in their legislation: for example, the Basler *Ehegerichtsordnung* required two witnesses of good repute to attend all betrothals. In addition, the intention to marry had to be published both at the parties' parish churches and at the city chancery. The marriage itself had to be solemnized in church.¹⁹⁶

Although the Swedish Church had nothing against also supervising the solemnity of the betrothal, the betrothal was not an adequate substitute for ecclesiastical wedding solemnities. Mid-sixteenth century rural deans' assize records show that couples marrying without solemnization were fined. Occasionally mere betrothals without previous notification of the vicar or his consent were considered reprehensible, for which the master of ceremonies was fined.¹⁹⁷ However, this may have been a Finnish variation only. The Reformer Mikael Agricola, later bishop of Turku, stressed in his *A Manual on Baptism and Other Rites of the Christendom*, printed in 1549, that no one but a priest was to join couples together in marriage as like nobody was to intervene into the office of another.¹⁹⁸

The Church Ordinance of 1571 explicitly forbade clandestine marriage contracts because these usually took place without parental knowledge although consummation validated the union.¹⁹⁹ In addition, after the Articles of Vadstena of 1553, 'betrothals that peasants perform' were regularly claimed to cause so much doubt and disputes that the people were to be exhorted to leave such matters to the priests. The Ordinance also claims that people were ignorant of the proper mode and formula, which is why such 'peasant betrothals' or troth-plights could not impede 'lawful betrothals' (*lagha festning*) performed by priests. The synod of Strängnäs in 1584 also took a stance against

¹⁹⁵ Knuutila, *Avioliitto*, 66–68, 321–332; Hafström, *Den svenska familjerättens historia*, 10–11.

¹⁹⁶ Safley, "To Preserve the Marital State," 166.

¹⁹⁷ Pirinen, "Keskiajan ja 1500-luvun," 40.

¹⁹⁸ Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 16.

¹⁹⁹ *KO 1571*, Ordning om Ehtenskapet, 118; Om ehtenskap, art. 1, *Biskop J. Rudbeckius' kyrkio-stadgar*, 17.

‘peasant betrothals’, only allowing betrothals performed at the church door immediately before solemnization.²⁰⁰ The problems often caused by valid, but private betrothals were also mentioned in later synodal statutes as the reason for recommending the ecclesiastical betrothing ceremony.²⁰¹ The statements of the clergy about the problems caused by the fact that the customary marriage process had been endorsed by secular law cannot be taken at face value, but rather understood as propagandistic statements and complaints with the clear aim of controlling the creation of the matrimonial bond. Judging by the ecclesiastical court material however, the people were quite aware of the difference between betrothals and weddings and knew how to perform them legitimately. Rather, problems were caused by private and unwitnessed trothplights, the rudiments of the medieval *sponsalia de futuro*.

The Church Ordinance tried to maintain that in general no betrothals were to take place except at the church door or in the vestry.²⁰² This way, the law claimed, controversy and dispute could be avoided as everyone witnessed the betrothal. Nevertheless, it fell short from forbidding all betrothals except those performed by a priest. If an already legitimately betrothed (*lagliga feste*) couple came to be married in church, they were not to be betrothed again when they came to the church door. This ‘rebetrothing’ had become a commonplace, though harmful, custom in many places, the ordinance claimed. Instead, the cleric was to remind the couple what they had promised at the betrothal, and then proceed to put the ring on the bride’s finger.²⁰³ However, some dioceses, most notably Strängnäs, issued statutes stating that betrothals were only to take place at the Church door immediately preceding the ecclesiastical wedding. The Church had also suitable liturgies, part of the solemnization liturgy, for the ecclesiastical betrothals.²⁰⁴ The couple, betrothed or trothplighted by the priest in church, was to accept punishment, often a fine, if they had intercourse before the solemnization ‘so that

²⁰⁰ Articles of Vadstena, *BSKH*, 2; *KO 1571*, Ordning om Ehtenskapet, 120. See also Om ehtenskap, art. 7, *Biskop J. Rudbeckius’ kyrkio-stadgar*, 18; Synod of Strängnäs 1584, *SSA II*, 10.

²⁰¹ Kyrko-ordning för Vexjö Stift 1619, *ES VIII*, 598; Circular of the diocese of Växjö 1584(?), *Undersökningar och aktstycken*, 52.

²⁰² *KO 1571*, Ordning om Ehtenskapet, 121. See also Circular of the diocese of Växjö 1584(?), *Undersökningar och aktstycken*, 52.

²⁰³ Articles of Vadstena, *BSKH*, 2; *KO 1571*, Ordning om Ehtenskapet, 121. See this repeated in Om ehtenskap, 9, *Biskop J. Rudbeckius’ kyrkio-stadgar*, 18–19.

²⁰⁴ Synod of Strängnäs 1583, *SSA II*, 4; Synod of Strängnäs 1584, *ibid.*, 13; Knuutila, *Avioliitto*, 78–79.

they cannot blame someone else if they break and carry out (*exequera*) the promise'.²⁰⁵

During the course of the later sixteenth century the Lutheran Church increasingly insisted on the necessity to solemnize the private betrothal, and private contracts that escaped the vigilant eye of the clergy were frowned on. The 1571 Church Ordinance insisted that priests frequently exhort people not to get betrothed or contract marriage in the evening while drinking ale, as was often the custom, because this prevented people from thoroughly considering the matter in advance. The Church justified this by referring to the evils arising from hasty and ill-considered marriages.²⁰⁶

Again, the Church painted the Swedish marriage custom here in unnecessarily black colours: the majority of Swedish betrothals were hardly made in the middle of the night out of an intoxicated whim. The cases appearing before the ecclesiastical courts in the 1590s end early 1600s, involving a large proportion of disputed contracts made in more dubious circumstances and with less deliberation than most matrimonial contracts, do not support such impressions. Betrothals were made in the afternoon or early evening, followed by the customary betrothal ale, and in some cases there is clear evidence that a more informal trothplight had preceded the formal betrothal.²⁰⁷ The circumstances of certain court cases reveal that this trothplight had taken place in the daytime. Moreover, the use of go-betweens and negotiators in the preliminary soundings hardly points to a very light-hearted attitude to pledging one's troth. Even if one or both parties changed their minds, this did not necessarily have anything to do with the lack of formality of the contract or lack of consideration. Again, the problem of private or vague, unwitnessed promises, where no gifts had been exchanged, was the greater evil.

Yet, the clergy had ambivalent feelings about ecclesiastical betrothals. Although they were superior to private trothplights, solemnization was the ultimate goal. Archbishop Abraham Angermannus preferred not to have the wedding process delayed before solemnization. It seems that the foot soldier Erik Larsson wished to be betrothed in church with

²⁰⁵ Synod of Uppsala 1611, 2, *SSA I*, 25.

²⁰⁶ *KO 1571*, Ordning om Ehtenskapet, 119. For Denmark, see Nelleman, "Rets-historiske Bemærkninger," 389, 396–401; Dübeck, "Women," 319–320; Söderlind, "Trolöfning," 58. For Norway see Telste, "Samliv," 149, 151, 154–156.

²⁰⁷ See, e.g. the examples in the previous chapter.

his bride, but instead he was advised to marry directly.²⁰⁸ Following the same principle, the archbishop forbade *sub poena privationis* the clergy of Linköping to perform ecclesiastical betrothals.²⁰⁹ In a case from 1594 involving an ecclesiastical engagement, the groom was the priest's servant. In this case it was probably the ecclesiastical influence that was behind the additional solemnity of the betrothal.²¹⁰

Clerics were anxious that the period between engagement and marriage be as short as possible in order to avoid long betrothals. The policy of the diocese of Västerås was to combine the betrothal and ecclesiastical solemnization by having the priest perform both at the same time in church. Synodal statutes insisted that betrothal and solemnization were not to be separated from each other except for important reasons.²¹¹

Yet, the chapter of Uppsala had to give its consent when priest Jonas of Rasbo forwarded the request of the nobleman Claes Kyle that he be permitted to betroth, obviously in a ceremony preceded by the priest, his fiancée Hillevi Posse before Kyle left for the meeting of the nobility. The chapter noted that there were weighty reasons to assent as Kyle had promised to marry her immediately after Easter. Moreover, the maiden's father, Lage Axelsson Posse, had for many years postponed the wedding although Kyle had prepared for it. However, Kyle was to give a written letter of obligation promising to arrange the wedding directly after his return.²¹² The amalgamation of the betrothal and solemnization was also endorsed by the nobility in the so-called Rosengren's bill. The trothplight performed in the presence of the parties, their parents and four witnesses was to have replaced the betrothal altogether.²¹³

At the Diet of Norrköping in 1604 the clergy decided that no trothplights were thenceforth to be considered lawfully made unless the vicar or his chaplain was present and authorized them. Moreover, those wishing to pledge their troth were to inform their vicar of this fourteen days in advance so that he could ensure that no impediments hindered the marriage. In addition, thenceforth the ceremony of trothplight was to take place in front of the high altar in order to give it more

²⁰⁸ ULA, UDP, 5.6.1594, 27.

²⁰⁹ Tryserum sochen, *IVA*, 70.

²¹⁰ ULA, UDP, 8.5.1594, 19.

²¹¹ E.g. VDA, VDP A I:1, 10.12.1595, 13; VDA, VDP A I:1, Synod of Västerås 1597, 38v.

²¹² ULA, UDP, 20.2.1600, 170v.

²¹³ G 2, Det Rosengrenska lagförslaget, *Lagförslag i Carl den Niondes tid*, 303.

sanctity, instead of at the church door.²¹⁴ King Charles IX obviously also favoured ecclesiastical betrothals as his bill proposed that a priest perform the betrothal in the presence of the couple, their parents and four witnesses.²¹⁵ Judging by the exhortations of the synods of Uppsala in 1607, 1608 and 1611 that priests observe the articles of the Diet of Norrköping, it took time to have them established even among the clergy. Archbishop Olaus Martini (1601–1609) even read the articles aloud to his clergy so that those, who had not yet written them down could do so and observe them in their entirety in their parishes.²¹⁶ Still, in 1611 Martini's successor Petrus Kenicius (1609–1636) had to remind the clergy to observe the Articles of Norrköping.²¹⁷ In 1604 the synod of the diocese of Uppsala also insisted that trothplighting was to take place in church and that the couple was to promise to celebrate their marriage in church within a certain time.²¹⁸ Indeed, the Church intended to have all rites, trothplights, solemnizations, baptisms and churchings performed publicly in church. Moreover, the major benefit of having the trothplight take place in front of the high altar was also pointed out: the chapter would be rid of the backlog of cases involving the breaking of betrothals and trothplights.²¹⁹

Although after 1604 the survival of the institution of betrothal, performed by laymen, was in jeopardy under the attack of the Church, it was precisely its secular history that was to its advantage. The betrothal and the rest of the Swedish marriage process had been written down in the secular provincial laws some three hundred years previously and had since undergone very little change in the royal law of 1442, which was still in force—and remained so until the 1730s. The Swedish clergy could not unilaterally change or abrogate existing law. Consequently, they had to take a step back: the clergy, meeting at the diet of Nyköping, admitted that according to Swedish law even trothplights performed at home were valid. Yet, the priests stated that it would be useful to

²¹⁴ Cleri Comitalis Circulaire 1604, *ES VIII*, 164; Linderholm, "Om norrländska kyrkostadgar," 28; Knuutila, *Avoliitto*, 290–292. See also Om echenskap, 8–9, *Biskop J. Rudbeckius' kyrkio-stadgar*, 17.

²¹⁵ G 2, Carl den Niondes lagförslag, *Lagförslag i Carl den Niondes tid*, 118.

²¹⁶ Synod of Uppsala 1607, 7 and De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 4, *SSA I*, 14, 19.

²¹⁷ Synod of Uppsala 1611, 2, *SSA I*, 25.

²¹⁸ Synod of Uppsala 1604, 8, *SSA I*, 9.

²¹⁹ De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 5, *SSA I*, 19.

have them performed at church and that the vicar was to be notified fourteen days before, for reasons of control.²²⁰

It is a debated issue to what extent the Church made progress in persuading people to include solemnization in the secular ceremonies in the sixteenth and especially in the seventeenth centuries. Nils Söderlind assumed that the Church's success, especially in the seventeenth century, was greater than has been assumed although only a few of the betrothal registers of the parishes have been preserved. Anu Pylkkänen has reached this conclusion independently in her examination of some late seventeenth century and early eighteenth century registers.²²¹ Solemnization had become the expected feature of the Swedish marriage process.

Breaking the Betrothal: Business as Usual

Although the dissolving of public engagements in Protestant lands has been defined as possible 'only on grounds also permitted for divorce',²²² this does not describe the practice in Lutheran Sweden. The difference between engagements and marriage remained as clear as before. If anything, the distinction was made even clearer by the disappearance of *de praesenti* vows that had not been preceded by an engagement. The grounds for breaking an engagement did not experience any Protestant transformation. If either party to an unconsummated betrothal or trothplight refused to go through with the wedding, (s)he could have the union broken for any reason. The Swedish Church respected the freedom of marriage and the Catholic tradition in this sense. Nevertheless, the grounds of the breaking were not without legal importance: the guilty party had to expect penalties. This was even stressed at visitations.²²³

Even after the Reformation the bindingness of betrothals was upheld in law, but as discussed above, dissolutions of betrothals seem to have been commonplace in the Middle Ages. The post-Reformation registers of the chapters of Uppsala, Linköping and Västerås and of the consistory of Stockholm show that cases concerning the breaking

²²⁰ Statutes of Nyköping 1612, Stiernman 1728–1743, I, 666; Knuutila, *Avioliitto*, 87.

²²¹ Söderlind, "Book review," 180; Pylkkänen, *Puoli vuodetta*, 242, footnote 98. See also Lennartsson, *I säng och säte*, 103.

²²² Witte, *Law and Protestantism*, 237.

²²³ E.g. Archbishop Andreas Laurentii Björnram's visitation articles (1585), *NKS*, 95.

off of betrothals were among of the most numerous marriage-related disputes. For the clergy, trying to reconcile the betrothed couple unless some more serious reason lay behind the discord, this was only the last resort. Even if only one party insisted on the dissolution, the chapter would deem the case a hopeless one and finally yield. In practice it appears to have been as easy to break a betrothal contracted by a priest as any other betrothal or trothplight.²²⁴

Naturally, the fiancés were usually also asked whether they had had ‘anything to do’ with each other. The expression signified sexual intercourse, as consummation would have created a marital bond, which was much harder to untie even after the Reformation had made divorce possible. As a rule, as long as the betrothed couple had not had intercourse, the betrothal could nearly always be broken off. Jöran of Quinnaby and Karin of Ljungby had been trothplighted and had had intercourse. Afterwards Karin had changed her mind because she had learned that Jöran was the son of the former executioner of Växjö, but as both lawful betrothal and sexual intercourse had taken place, ‘nobody could separate them’.²²⁵

The chapter always inquired into why the parties wished to break the betrothal. This was on the agenda for a couple of reasons. First, the court would try to reconcile the couple. Second, the chapter usually established guilt: the party who frivolously or lightly wanted to abandon the other had to face penalties imposed on him by the court. These ranged from the mutual returning of the betrothal gifts, punitive indemnity and compensation for costs to the innocent party, to a fine going to the Church, hospital or paupers, and a period of enforced celibacy, whose length was at the court’s discretion. Only seldom was the whole arsenal used in one case, though. The party breaking the troth had to return the betrothal gifts received or renounce those given and double their value as compensation.²²⁶ Occasionally, even corporal punishment was used: Nils Kock’s daughter had been trothplighted with a young man, who had since broken his troth (*kom[m]it troospiell*) and married another woman. The woman was allowed to contract with another, and her former fiancé was to be fustigated. In another case, Måns Johansson’s daughter seems not to have had any legitimate reason

²²⁴ See also Lennartsson, *I säng och sätte*, 103.

²²⁵ Hultersta sochen, *VAA*, 29.

²²⁶ Synod of Uppsala 1572, *BSKH*, 27. See also Nova Ordinantia, in *KOF I*, 482.

for her adamant refusal to marry her fiancé and consequently she was whipped. In addition, she had to remain single until her former fiancé had married or else be fustigated twice.²²⁷

The Church Ordinance of 1571 did not mention enforced celibacy as a penalty for frivolously rupturing an engagement, but the statutes from Västerås, issued in the 1630s or 1640s, stated that this penalty had its source in old (possibly Catholic) Swedish provincial statutes, which may not have survived until our days. The party guilty of breaking of his/her troth was not allowed to marry another for the next three years.²²⁸ At the Council of Örebro in 1586 the clergy decided to impose a period of forced celibacy on the party who broke the engagement: this penalty, combined with the loss of engagement gifts, lasted until the innocent party had married.²²⁹ By the late sixteenth century at least, enforced temporary celibacy seems only to have been imposed on those whose refusal to fulfil the promise was deemed frivolous or who could not present any very convincing proof of any fault of the other party sufficiently grievous to justify the refusal. Some only said they could not take a liking to their bride/groom. For the Church this was reason enough to break the bond, as it did not force betrothed couples to stay together unless they had had intercourse and thus contracted marriage, but the reason itself was not considered legitimate, as such weighty vows ought not to be taken without thorough consideration. Some seventeenth-century statutes specified that the party guilty of refusing the other without valid reason was to remain unwed until the innocent party had either been married to someone else or pleaded on his or her behalf.²³⁰ In 1606, Måns Andersson complained that his fiancée refused to wed her and had spread false rumours about him. Still she refused adamantly to marry him without any fault in him. The Linköping chapter ordered her to forfeit both the gifts she had received and given and pay fines to the Church. In addition, she was to remain unmarried for three years unless Måns pleaded for her.²³¹

²²⁷ Hult sochen, *V4A*, 102; Skerstada sochen, *V4A*, 107. See also November (?) 1596, UDP, 131, ULA.

²²⁸ Om echenskap, art. 10, Biskop J. Rudbeckius' kyrkio-stadgar, 19. Cf. 23.8.1524, *BHBR*, 320.

²²⁹ Articles of Örebro 1586, Stiernman 1728–1743, I, 326; Knuutila, *Avoliitto*, 166. See also ULA, UDP, January (?) 1596, 104.

²³⁰ E.g. ULA, UDP, January (?) 1596, 104; Lennartsson, *I säng och säte*, 118.

²³¹ VaLA, LDP, 27.9.1608, 24.

The breaking of betrothals raised the issue of returning the gifts as compensation. In addition, the party refusing to honour his troth could be forced to compensate the innocent party for any costs, e.g. betrothal (or trothplight) ale or compensation for wedding preparations and upkeep. In a case heard in 1596, Jöns the Taylor had had sex with Ingeborg Jonsdotter, a virgin, for which he was fined forty marks. He had, however, pretended to want to marry her and, accordingly, her parents had invested in wedding preparations (*bryllops kost*). Moreover, he had been living, 'feasting and spending', at their expense at their farm for over a year, giving the family additional reasons to believe that his intentions were serious, until he made clear that the marriage was off. For his condemnable behaviour, the assizes of Jönåker sentenced Jöns to pay Ingeborg's parents the huge sum of forty *dalers* as compensation. As to the breaking of the betrothal, the assizes referred the parties to the bishop.²³² Later the Church also insisted that brides forfeit to the poor of the parish part of the bride help they had collected.²³³ Occasionally, the court could fine a man for abandoning his bride, as in 1575 when Olof Månsson was fined eighty marks, although the reason for the fine remains unclear.²³⁴

What, then, were perceived as legitimate grounds on which one could escape reproach and sanction for breaking off an engagement? The 1571 Church Ordinance failed to list the causes for breaking an engagement.²³⁵ Sexual infidelity was obviously such a reason. Generally the guilty party had to be sentenced for the crime at the secular court before the chapter dissolved the engagement. Unless either party had committed fornication or another sexual crime punishable by the secular arm, the secular assizes would not take a stand on the dissolution of the betrothal, but refer the case to the chapter.²³⁶ In a case from 1603, Gertrud Gisedotter had evidently had developed a dislike towards her fiancé Per Olsson and she wanted to break off their trothplight, because of which her father and fiancé had agreed on the financial repercussions. However, when it was found out that Per Olsson had violated

²³² May 1597 Jönåker, Sörmländska härads domböcker från 1500-talet, 69–70 (*elliest ther i garden åhr och dagh panckiteret och tårtt*); Lennartsson, *I säng och säte*, 91.

²³³ E.g. CEAP, 77.

²³⁴ *Saköresbok för Medelpad 1541–1609*, 143.

²³⁵ Cf. *Church Law of 1686*, 16:2: lack of consent and refusal to assent later e.g. through intercourse, reconcilable hatred, fornication or another shameful deed, or a contagious or incurable disease.

²³⁶ E.g. ULA, Dalarnas dombok, 19.2.1547, 81v–82.

his own maid servant Kirstin Månsdotter during the engagement with Gertrud, the union and the agreement were broken in the presence of the bishop and chapter. At the assizes Gise Persson and his son Per Gisesson were reconciled with Per Olsson when Per Olsson promised to pay Gise sixteen *dalers* and one mark. In addition, Per Olsson was fined forty marks for the violation.²³⁷ In a similar case from 1612 a man was convicted for violating a maid, whereby his fiancée immediately wished to break her engagement, as the act was suspected to have taken place after the trothplight and exchange of gifts. This the man denied, but the couple evidently agreed to split up as the girl returned the gifts, a chain, ring and spoon weighing 11½ *lod* (= 145.2 grams), receiving as compensation a spoon weighing 4 *lod* (= 52.8 grams).²³⁸

One infidelity normally sufficed: if the innocent party wanted to have the engagement dissolved, the chapter would accommodate itself to his/her wishes and grant permission to contract with another. When Brita's fiancé, Arvid the Tailor had committed fornication with two women after the trothplight, she was granted permission to marry someone else 'as he had lapsed so often'.²³⁹ However, if the groom's sexual misconduct with another woman during betrothal consisted only of petting and fondling, which though reprehensible fell short of intercourse, it did not suffice for breaking off the engagement.²⁴⁰

The canonical dogma of errors survived the Reformation. Canon law had distinguished between several kinds of errors that could invalidate the consent of either party. The erring person had made a presupposition regarding the other's person (*error personae*) such as identity, social status (*error conditionis*), such as servile status, quality (*error qualitatis*) such as health, honesty or virginity, and fortune (*error fortunae*) e.g. property. A betrothal could also be broken off if the health of one of the parties was discovered to be seriously impaired; leprosy, pox and epilepsy were valid reasons for breaking the engagement, but if the existence or severity of the condition was doubted, the party initiating the rupture might be submitted to penalties.²⁴¹ In some cases, the chapter allowed dissolution of the trothplight apparently without sanctions, when the

²³⁷ 11.7.1603, *Östra härad's dombok 1602–1605*, 67–68.

²³⁸ 2.3.1612, *SHD 1601–1651*, 27–28.

²³⁹ Åsboo sochen, *VAA*, 127.

²⁴⁰ Lennartsson, *I säng och säte*, 95–97.

²⁴¹ E.g. ULA, UDP, 22.4.1596, 115v. See also *CEAP*, 39; Söderlind, "Error," esp. 98–100, 104–108.

bride found out that the young man had been enrolled as a soldier.²⁴² A variation on the theme of *error qualitatis* is the case in which a man had pledged his troth to a woman, only to find her already carrying another man's child. In Swedish practice this was perceived as a valid reason for breaking the proposed match off.²⁴³

Conditional contracts could also be broken although the post-Reformation Swedish Church discouraged them. Johan Larsson was on the point of betrothing a girl, when he heard rumours that she had had sex with another young man. He then asked her about the truth of the tale, but she denied it. Johan then betrothed her in the presence of two men and gave her four marks as betrothal gifts on the condition (*förord*) that if she was found guilty, he would have his money back. At the assizes, however, the young man admitted the affair and even Johan's bride confessed the truth. Consequently, the betrothal was dissolved.²⁴⁴

In some cases one of the parties, more often the woman, had been pressured into the betrothal. If lack of consent could be proven, the union was systematically annulled.²⁴⁵ The chapter of Västerås excommunicated widow Ingeborg of Björlunda, who had got twice trothplighted within a month, until she had explained her behaviour at the chapter. She wished to solemnize with the second man, and a week later he, footsoldier Jacob Mattsson, appeared at the chapter as the envoy of the widow. The first trothplight, he explained, had taken place completely against Ingeborg's will because her paternal uncle had persuaded her to accept the other man, Per Jönsson, although Jacob had first presented her his suit through his father. So she got betrothed to a man she did not care for, but a few days afterwards, 'greatly distressed and repentant', she had sent back the trothplighting gifts. Then, Ingeborg and Jacob become trothplighted. The chapter imposed on Ingeborg a high eight-*daler* fine for getting trothplighted with another before having been reconciled with the first so that he and his kin no longer objected. Before these conditions were provedly fulfilled, the couple was not allowed to solemnize.²⁴⁶ Håkan of Ryem's

²⁴² *CEAP*, 63.

²⁴³ 28.11.1602, *Östra härads dombok 1602–1605*, 121.

²⁴⁴ ULA, Dalarnas dombok, 1.12.1550, 180–181v.

²⁴⁵ See also Lennartsson, *I säng och säte*, 94–95.

²⁴⁶ VDA, VDP A I:2, 7.11.1599, 15v–16.

daughter wanted to break her trothplight because she had been forced to the union by her parents against her will, which her parents admitted to be true. The engagement was broken off and Håkan promised two *dalers* to the cathedral.²⁴⁷

Larceny was also a legitimate reason for breaking the union, and bishops were ready to dissolve a lawful engagement when, for example, the woman had learned after the trothplight that the man was reputed or suspected to be a guilty of theft.²⁴⁸ Desertion or malicious abandonment of one party had been a valid reason for breaking an engagement already in canon law. That the Reformation introduced desertion also as grounds of divorce probably facilitated the dissolution of the betrothal. In a case from 1596, Madelin Nilses had pledged her troth to Anders the Tailor, who had stolen back his gifts and deserted her five years previously. Although she had not searched for him, she requested permission to contract again. Her honest behaviour during her fiancé's absence and his breach of faith were mentioned as reasons for granting her wish.²⁴⁹ Peder of Kolstorp's daughter was lawfully betrothed to a youth, who subsequently had lain with a widow and run off. She was told to behave honestly until Christmas: if her fiancé did not return before that, she could marry another.²⁵⁰ Cases also came to court when either party, usually the fiancé, delayed the marriage. In such cases, the appellants were often women: as discussed above, the groom played the active part in having the bride's family prepare for the wedding feast. If the groom was passive, the bride's family could try to put pressure on the groom to have him name the day. However, if the groom procrastinated or was hostile, the bride had no other alternative than to wait for him to change his mind or to have the betrothal dissolved by the ecclesiastical court.²⁵¹

Although the episcopal chapters had been breaking betrothals since the Middle Ages, the Lutheran Church still had to remind the people that even private trothplights were to be taken to the chapters to be dissolved. It was a sin to contract new ties before the old ones had

²⁴⁷ Ölmistada sochen, *VAA*, 110.

²⁴⁸ VDA, VDP A I:1, 9.11.1599, 77; VDA, VDP A I:2, 9.11.1599, 15v; Skerstada sochen, *VAA*, 107–108.

²⁴⁹ Löth sochen, *VAA*, 41.

²⁵⁰ Hult sochen, *VAA*, 102.

²⁵¹ See also *Church Law of 1686*, 16:5; Lennartsson, *I säng och säte*, 91–93.

been dissolved and the innocent party compensated.²⁵² Ultimately, the union might be dissolved on the grounds that the trothplight had not been followed the legitimate forms for a betrothal. For example, *magister* Carolus Hedemorensis, headmaster of the school of Stockholm, and Margreta, daughter of Hans Jåpsson of Hedemora, had their 'unlawful trothplight' lawfully and amicably broken by the chapter of Västerås. *Magister* Carolus gave Margreta twelve ells (= 7.128 metres) of English cloth (*packe lakan*) and Hans Jåpsson four pounds (= 2640 litres) corn for his expenses (*omkostnadt*) and so that 'they would be well settled'. In a similar case, the chapter of Uppsala allowed dissolution by mutual agreement and compensation because there was no *legitima sponsalia* between the parties, but only promises of future marriage (*promisiones de futuro conjugio*).²⁵³

If the betrothed couple had had intercourse, the matter was considerably more complicated. Normally, consummation carried with it the assumption of matrimony, which could only be broken by death or divorce. Naturally, the chapter sought to reconcile such couples. Israel the Tanner, who wanted to abandon his trothplighted fiancée, Karin, Simon Döpken's maid, was explained that he could not desert her especially as she was pregnant with his child. In the presence of the chapter of Västerås and the mayors, who undoubtedly made their authority felt, the couple was reconciled and Israel promised to 'complete' his union with Karin without delay.²⁵⁴ As mentioned above, the law considered sexual relations of a betrothed or trothplighted person with an other person than the fiancé(e) as adultery. In a case of double trothplight and consummation, Måns Fransson, who had promised marriage to two girls and taken the maidenhead of both, had first to pay the fines for violating a virgin at the secular assizes. Then, he had to be reconciled with the second girl and her family, pay the cathedral of Västerås half a skippund of copper (85 kilos) and marry the first girl. Moreover, he was to be fustigated for his perjury. At the last point, the chapter finally relented: it sufficed that Måns confessed at the church door that he had angered God.²⁵⁵

²⁵² Kyrko-ordning för Vexjö Stift, 1619, *ES VIII*, 598. See also *Church Law of 1686*, 16:4.

²⁵³ VDA, VDP A I:1, 9.9.1596, 23v; ULA, UDP, 18.5.1598, 156.

²⁵⁴ VDA, VDP A I:1, 7.3.1599, 65; VDA, VDP A I:2, 7.3.1599, 9v.

²⁵⁵ VDA, VDP A I:1, 15.1.1596, 10v; VDA, VDP A I:1, 15v. See also Lennartsson, *I säng och sätte*, 100–102, 121.

After the betrothal, the bride often visited her fiancé's home in order to acquaint herself with her future husband, home and in-laws. If these were found satisfactory, the marriage process went on.²⁵⁶ The records of the chapter of Uppsala refer to such visits in connection with the couple having had sexual intercourse during the visit, or that one party had been disappointed in either the position or the character of the other so that (s)he wished to break off the betrothal.²⁵⁷ Indeed, as the ecclesiastical trothplight was considered almost on par with solemnization, it authorized cohabitation.²⁵⁸

Dissolving an engagement by mutual assent was relatively rare in the chapter registers as usually one party resisted the breaking off. However, in one such case the widow Örsilja and Matts Jonsson were trothplighted, but solemnization or consummation had not taken place. The couple had been arguing about trifling things and Örsilja refused to be reconciled. Because she had often threatened to hang herself if forced to marry Matts and because Matts also wished to be rid of her, the chapter consented to the dissolution of the trothplight. Nevertheless, the couple had to stand in front of the church porch and be publicly absolved by the priest.²⁵⁹

As mentioned above, the betrothal or trothplight gifts were the aspect that interested the secular courts the most in the dissolution of engagements. Secular and ecclesiastical authorities alike treated the gifts as good-conduct prizes: the innocent party was to keep the gifts s/he had been given, while the guilty party had to return any possible gifts s/he had received. When Mårten Knutsson wished to break his trothplight with Anna, he wanted to get back his gifts, a spoon and a band with a ring attached to it. However, the jury thought that as Anna had committed no offence, she was allowed to keep the gifts, but everything else she had received from him had to be returned.²⁶⁰ Moreover, the guilty party was obliged to pay a sum corresponding to the value of the gifts to the cathedral.²⁶¹ As the gifts were preconditions of valid trothplights, they naturally formed one of the major preoccupations of the early modern Swedish courts when dealing with the dissolution of

²⁵⁶ Kaivola, *Kahden kauppa*, 10–11, 75, 176; Heikinmäki, *Suomalaiset häätavat*, 117–125.

²⁵⁷ E.g. ULA, UDP, 12.5.1596, 116v.

²⁵⁸ Pietilä, "Kirkon tuomiovalta," 119.

²⁵⁹ ULA, UDP, 3.2.1596, 104v. See also ULA, UDP, 8.6.1596, 120v.

²⁶⁰ ULA, Dalarnas dombok, 10.2.1550, 171.

²⁶¹ ULA, UDP, January 1596, 103.

engagements. Moreover, unlike the practice in many other countries in which the trothplighting gifts could be of small value or mere humorous tokens, the Swedish gifts were often quite valuable.

4.5 *Increasing Insistence on Ecclesiastical Solemnization*

The Growing Acceptance of Ecclesiastical Solemnization

The marriage process experienced no upheavals in post-Reformation Sweden, as the role of solemnization remained largely intact. Nevertheless, in the early days of the Reformation in 1528, the nuptial mass might have been omitted at the solemnization, as the Council of the Realm complained that solemnization of marriage ought to be accompanied by the nuptial mass, as was 'the good old custom'.²⁶² The post-Reformation Swedish Church was also campaigning for the improvement of the status of the solemnization and giving it a legal role as the constituting element of marriage formation. The liturgical changes in the wedding rituals are a sign of this trend. Moreover, in the early seventeenth century the priests started to announce in the active tense that they joined the couple in the name of the Trinity. This was further evidence of the increasing role of the priest and the solemnization at the expense of the marriage guardian and betrothal.²⁶³

The forbidden marriage periods of the Catholic Church were somewhat curtailed after the Reformation: weddings and solemnizations were not to be celebrated on the main feasts (Christmas, Easter and Whitsun) and during the Easter Lent. Despite this, noble weddings took place on such feasts at times. Moreover, Reformation ideology, stressing as it did that God had instituted marriage and thus it was unblemished and pure, was difficult to combine to the elaborate Catholic list of forbidden periods and feasts.²⁶⁴ Moreover, the continuous campaigning that people should solemnize their marriage would have fitted badly with a vast number of forbidden days. In fact, for example, in certain dioceses in late medieval Ireland the forbidden feasts had been curtailed from ca. twenty to two weeks per annum expressly in order to encourage

²⁶² *SRA I:1*, 109.

²⁶³ Knuutila, *Avioliitto*, 345–350.

²⁶⁴ *KO 1571*, Ordning om Ehtenskapet, 122; Knuutila, *Avioliitto*, 218–220.

ecclesiastical solemnization.²⁶⁵ Yet, in sixteenth and seventeenth century Sweden the liberality of the interpretation of forbidden periods depended on the region, time and social status of the contracting couple.²⁶⁶

The insistence on the reading of the banns on three consecutive Sundays was upheld after the Reformation. Before any marriage was completed (*fullkommas*), the banns were to be publicly read in the surrounding parishes.²⁶⁷ The 1571 Church Ordinance gave a formula for the reading of the banns: the parties wishing to marry asked for the prayers of good Christian people that the marriage would be pleasing to God (*thet må wara i Gudhi teckt*) and bring them happiness and blessing. If someone knew of an impediment, he was requested to speak of it in good time. It was also stressed that the priests were to ascertain before betrothing a couple if impediments, such as consanguinity existed.²⁶⁸ It was even recommended that the banns be read for trothplights as an alternative to reading them only before the wedding. While some parishes and dioceses adopted the publishing of banns before the trothplight, in late seventeenth century the attitude had changed: the custom of reading the banns from the pulpit before betrothal or trothplight was to be abolished.²⁶⁹

In 1598 some peasants from Rikenberga who had neglected having the banns properly read came to the Uppsala chapter and wished to be reconciled with the Church as they wished to be married in church. For a small penance of goods *in natura* the chapter suffered the church wedding to take place, but the protocol called the offence contempt of the legitimate process of contracting marriage (*contemnentium legitimum processum in contrahendo Conjugio*).²⁷⁰ However, such punishments were by no means routinely given in the Uppsala chapter, and may have been

²⁶⁵ Cosgrove, "Marriage," 37–38: the only forbidden period extending from Palm Sunday to the Sunday after Easter.

²⁶⁶ E.g. *CEAP*, 247 (solemnization forbidden on the feast of Thomas, 21 December), 252 (solemnization forbidden before the thirteenth day of Christmas), cf. *ibid.*, 248.

²⁶⁷ 19, Georg Normans kyrkoordning på svenska, *BSKH*, 17; Circular of the diocese of Växjö 1584(?), *Undersökningar och aktstycken*, 52.

²⁶⁸ *KO 1571*, Ordning om Ehtenskapet, 120–121. See also the *Church Law of 1686*, 15:18, 15:26.

²⁶⁹ Synod of Uppsala 1608, *SSA I*, 17; Conclusiones Generales ca. 1650, *Norrländska kyrkostadgar och synodalakter före 1812*, 135; *CEAP*, 391; Söderlind, "Lysningspraxis," esp. 60–62; Knuutila, *Avioliitto*, 234–235, 249–250. Cf. Synod of Uppsala 1688, *SSA I*, 163.

²⁷⁰ ULA, UDP, 15.9.1598, 146.

the result of special local circumstances or the activity of the local vicar in, for example, excommunicating contumacious parishioners. Namely, e.g., the synod of 1585 insisted that betrothed couples, who refused to solemnize their marriage were to be excommunicated.²⁷¹ Solemnization had to precede consummation if one wanted to escape the fines for prenuptial fornication (intercourse with one's betrothed). Nevertheless, the clergy still upheld the validity of a marriage made by betrothal and subsequent consummation. In a case from 1596 clerics had expressly declared that trothplight followed by intercourse was a completed marriage (*full ähteskap*) when a woman had been engaged to a man in the presence of witnesses, received a betrothal gift (three marks *peninger*) and had intercourse with the man.²⁷² Nevertheless, the persistent efforts of the Church to advocate the necessity of ecclesiastical solemnization were rewarded with time. There was an increasing perception that solemnization was an indispensable, perhaps even the most important part of the wedding process.

As mentioned above, in the course of the sixteenth-century the chapters had to confirm in many cases the legitimacy of people whose parents had only been betrothed, but not solemnized their union in church. Rival heirs had denied this legitimacy because of the lack of solemnization although secular law quite clearly stated that the children born to a betrothed bride were legitimate and inherited as such. As secular law left no doubt about the matter, one may wonder why the relatives bothered to make a claim with no chances of success. While these may only have been desperate attempts to deprive the children of their rightful inheritance by any possible legal argument, it may also be that the legitimizing aspect of the ecclesiastical marriage ceremony had started to take root in people's minds. Solemnization was being perceived as an indispensable legal act in the marriage process. Evidence from late sixteenth-century Stockholm also supports the impression that the ecclesiastical ceremony had largely become a customary part of the marriage process.²⁷³ Naturally there were still disputes involving contracts lacking ecclesiastical participation or informal cohabitation:

²⁷¹ Synod of Strängnäs 1583, *SSA II*, 4; Synod of Strängnäs 1585, *ibid.*, 26.

²⁷² 9.6.1596 Jönåker, *Sörmländska härad's domböcker från 1500-talet*, 65.

²⁷³ 11.3.1594, *SST från år 1592 I*, 198; 5.5.1596, *SST från år 1592 II*, 33.

in some cases the parties were characterized as ‘*trolloffed hustru/man*’ implying the lack of solemnization and wedding.²⁷⁴

The chapter records indicate that the clerics attempted to monitor that engaged couples completed the marriage process by wedding *in facie ecclesiae*. In many cases involving successful mediation between trothplighted brides and grooms, the chapter of Uppsala insisted that the marriage be solemnized by or at a certain date. The chapter of Västerås reminded Nils Persson, living on Strömsholm, that he was to arrange his wedding.²⁷⁵ The visitation records of 1596 of the diocese of Linköping contain the names of a couple of hundred men, who were living together with their wives without solemnization. The couples present were persuaded to solemnize forthwith or to provide sureties for doing so soon after. A failure to solemnize on the appointed date would lead to fustigations and fines. There is also evidence from the late seventeenth century that the Church wished to ensure by the testimonies of at least four witnesses that the ecclesiastical solemnization was followed by the wedding ceremony and that the couple started to cohabit soon afterwards.²⁷⁶ Usually the complaint was rather the opposite: that couples cohabited before solemnization.

The increasing emphasis on solemnization was influencing the attitudes towards the traditional marriage process especially in the course of the seventeenth century. During the seventeenth century several attempts were made to reform the Church Ordinance of 1571. In 1619, Archbishop Petrus Kenicius presented a proposal drawn up by the bishops to King Gustav II Adolf. This proposal probably failed to please the king who, unlike the bishops, favoured a general consistory formed by both laymen and clerics.²⁷⁷ In the eyes of the Church betrothal and intercourse were to be completed by ecclesiastical solemnization, which both parties had the right to demand of the other. In case of breach of contract, the injured party could claim damages while the guilty party could only marry another in special circumstances. The betrothal/trothplight became an increasingly private act as the Church shifted its interest wholly on ecclesiastical solemnization. In the

²⁷⁴ E.g. 9.6.1599, *SST från år 1592 II*, 292–293; 11.7.1597, *SST från år 1592 II*, 141.

²⁷⁵ VDA, VDP A I:1, 26.11.1597, 44.

²⁷⁶ Lempiäinen, *Pispan- ja rovastintarkastukset*, 183

²⁷⁷ Lundström, *Laurentius Paulinus Gothus*, 152–153.

eighteenth century priests were even forbidden to assist at trothplights.²⁷⁸ The Church considered bedding and the blessing of the nuptial bed a less important ritual of smaller significance (*res adiaphora*). Still it wanted to ensure that no offence would be caused by uncustomary variations of the practice, such as bedding before the wedding meal, which may have been a custom spreading from Stockholm. Priests were ordered to leave the wedding on such occasions and couples exhorted to stick to the old custom.²⁷⁹

What could not be cured had to be endured. Synodal statutes repeated time after time that although trothplights at the homes of the parties were valid if the forms enunciated in secular law had been followed, in order to evade problems it was recommended that they take place in church. Moreover, some statutes threatened that if a priest was not notified of the trothplight a fine of one *daler* would have to be paid.²⁸⁰ That laymen acting as masters of ceremony at trothplights without proper authorization from the vicar were fined by the Church was also a novelty.²⁸¹ Many synodal statutes emphasize that the period between trothplights and solemnization be as short as possible, or that the church wedding take place at once. But in the regions in which trothplights and betrothals still took place, the custom was to be permitted.²⁸²

The Swedish late-medieval synodal statutes and episcopal admonitions attacking delayed marriages and premature cohabitation of betrothed couples raised much the same issues as those from the late seventeenth century. This may lead one to think that the several centuries of intensifying ecclesiastical teaching and, after the Reformation, the example of the clergy had little impact on the customs of the people. However, this was hardly the case: the people were not immune to the repeated ecclesiastical statutes and admonitions. The persistence of old customs should not cloud the unquestionable fact

²⁷⁸ Hellsten, *Kyrklig och radikal*, 84.

²⁷⁹ 17.12.1631, 33.8.1640, *Kulturella interiörer*, 29, 97.

²⁸⁰ Cleri Comitialis Circulaire 1611, *ES V*, 165; Kyrko-ordning för Vexjö Stift 1619, *ES VIII*, 598; Lennartsson, *I säng och säte*, 87.

²⁸¹ E.g. Constitutiones...Johannes Baazii Sr. 1647, *ES I*, 91.

²⁸² E.g. Synod of Västerås 1648, *Undersökningar och aktstycken*, 110; Söderlind, "Book review," 181.

that a growing part of the population was increasingly conforming to the ecclesiastical ideals.²⁸³

Banns, Foreigners and Evidence: Coping with Mobility

The Reformers had followed in the Catholic Church's footsteps in controlling marriage formation. A common feature of the Lutheran Churches was that solemnization was seldom made a prerequisite of valid marriage.²⁸⁴ In Sweden such an extreme measure would have been unenforceable in the context of the strong popular wedding process, firmly anchored in secular law. The onset of the Reformation did not change the ambitions of the emerging Lutheran clergy: ecclesiastical solemnization was as firmly on their agenda as it had been for the Catholic Church. The newly forged alliance with the secular authorities could only improve the possibility to ensure publicity and the participation of the clergy in making the marriage. Solemnization was regarded as a means of maintaining good order, morals and decency, and of preventing people from making mistakes about the marital status of others. The priest was the guardian of the honesty of the respected and respectable estate of matrimony. He was to refuse to join minors or children together because they were unlikely to understand the meaning of marriage. This was thought necessary because such marriages, it was argued, caused much disorder. Moreover, honesty and discipline necessitated that one could only marry after reaching majority.²⁸⁵

Consequently, after having settled the issue of parental consent, the Protestant churches had to decide on the solemnities necessary for valid marriages. Ceremonies preceded by banns and performed by a priest in church were obviously preferred. Luther complained how 'loose fellows' roamed around Germany and whenever one of them 'sees a wench that takes his fancy he starts getting hot and right away he tries to see how he can get her, goes ahead and gets engaged again'. This resulted in multiple consummated engagements and, even worse, bigamous weddings, such scandals being committed 'in the name and under the appearance of marriage'. This the pastors could prevent by instructing fathers not to give their daughters to strangers and authorities not to

²⁸³ See e.g. Pylkkänen, *Puoli vuodetta*, 242, note 97; Heikinmäki, *Suomalaiset häätävät*, 177.

²⁸⁴ Friedberg, *Das Recht der Eheschliessung*, 212–218.

²⁸⁵ *KO 1571*, Ordning om Ehtenskapet, 120.

allow such unions. Priests were not to marry, bless or even read the banns of people, who were unable to prove their honesty and freedom to marry by sufficient written and oral testimonials.²⁸⁶

How did the Swedish church react to the problem of ensuring that the mobile people of the Baltic Sea area were free to marry, acute since the Middle Ages? The Swedish Church resorted to the same means as the Catholic Church: strangers or unknown people had to present proof of their unmarried status and of the non-existence of impediments before they could be joined in matrimony.²⁸⁷ In the diocese of Växjö, strangers, whether Swedish or foreigners, had to present a testimonial about their life and conduct in their previous domicile. But even testimonials or passes were not substitutes for the publicizing of the banns, but complementary.²⁸⁸ Swedish clerics upheld the need to present evidence as far as possible, especially if rumours were circulating about the existence of an impediment. Elin, Bishop Bellinus of Västerås's maidservant, had plighted her troth with Knut the Bookbinder, but Elin had to clear herself from the rumour that she was trothplighted with a man in Hälsingland before being allowed 'to conclude their marriage'. This she did with the help of three witnesses.²⁸⁹ Likewise, Jon Andersson, a Danish shipbuilder, who wished to solemnize with his bride Brita, had experienced some problems related to his previous sojourn in Nyköping. As he had, however, since obtained many documents that no impediments existed, the chapter allowed the solemnization provided that both Jon and Brita had two or three men as surety for any possible sequel.²⁹⁰ Although the Dane Marcus Mölare possessed a letter saying that his wife was dead, he was sent to Malmö, the domicile of the wife he had abandoned, in order to get documented proof concerning his wife. Otherwise, he could not marry the Swedish woman with whom he had children.²⁹¹

²⁸⁶ Martin Luther, "On Marriage Matters" [1530], 293–294. See also Schwarz, *Die Bedeutung der Sippe*, 66–67; Safley, *Let No Man Put Asunder*, 31; Safley, "Civic Morality," 176; Witte, *Law and Protestantism*, 239–240.

²⁸⁷ *KO 1571*, Ordning om Ehtenskapet, 119; Synod of Strängnäs 1585, *SSA II*, 26; Om ehtenskap, art. 5, *Biskop J. Rudbeckius' kyrkio-stadgar*, 18. See also the *Church Law of 1686*, 15:19.

²⁸⁸ Circular of the diocese of Växjö 1584(?), *Undersökningar och aktstycken*, 52; *CEAP*, 199, 205, 413.

²⁸⁹ VDA, VDP A I:1, 27.2.1601, 94; VDA, VDP A I:2, 27.2.1601, 24v.

²⁹⁰ VDA, VDP A I:1, 22v.

²⁹¹ Westerwick stadh, *VAA*, 71. See also Åby sochen, *VAA*, 117.

But what if such proof could not be obtained because of the long distances and the high expenses involved in procuring testimonies from the various residences of the foreigner? One must remember that late sixteenth-century Sweden, and especially the capital Stockholm, had a small but very mobile foreign population: Scottish, German and French mercenaries, German, Flemish, English and Danish artisans and merchants. Moreover, the Swedish realm comprised not only of Sweden and Finland, but also increasingly of areas in Estonia and Livonia. The lack of reliable evidence was thus a common problem. However, if it was not available and the impediments of consanguinity or affinity were most unlikely, the clerics probably accepted the principal parties' and, on occasion, pledges' oaths that no previous tie precluded the marriage. The foreigner swore to accept capital punishment for bigamy if it later became evident that a prior contract existed.

The Norwegian beggar with a wooden leg had no 'proof or pass' of his being free to marry Karin, widow of Mathis Larsson from Uppsala. However, the beggar agreed to forfeit his head if his claim to be free of an impediment was found to be false. When Claus Petersson from Greifswald in Pomerania wished to marry a serving wench in Stockholm, the Stockholm chapter was reluctant to give its permission. It referred to the Church Ordinance, according to which strangers and unknown people were not easily to be allowed to marry without evidence. However, licence was given after he had signed a pledge that if anyone claimed that he had previously been engaged or married elsewhere with another, he accepted without hope of mercy the punishments (apparently for bigamy) of the law of Sweden and Church Ordinance.²⁹² Another traditional alternative was to use the statements of witnesses as proof that no impediment existed. However, even this method was open to abuse. In a case from 1596, Karin had been wedded in church after Matts Gunnarson of Norrköping had presented witnesses that he as her husband-to-be had no wife in Finland—contrary to rumours. Yet, two weeks after the wedding his Finnish wife appeared and claimed her husband.²⁹³ This again proves that people were not always required to produce a certificate of their single status from their parish priest even

²⁹² ULA, UDP, 12.2.1595, 43v, 57; SStA, SDP, 5.11.1595?, 10; Wadstena stadh, *VA*A, 133.

²⁹³ Dagzberga sochn, *VA*A, 196.

when such proof could have been obtained without insurmountable delay and expenses.

Clerics might waver when all the necessary arrangements had been made for the wedding, but the necessary proof was still lacking. The priest Anders of Rytterne inquired of the chapter of Västerås whether he was to solemnize the union between a peasant and his bride, widow Brita from Norrköping, otherwise unknown to the priest, as everything was ready for the wedding. The chapter disallowed solemnization until the woman had obtained proof from all the localities she had previously been to. The bridegroom *in spe* appeared in person two days later requesting permission to solemnize as everything was prepared for the wedding. But the chapter remained firm: no ecclesiastical benediction would be performed before Brita had received evidence that she was free to marry.²⁹⁴ In another case, Olof Hansson, a stranger, had been enrolled as a footsoldier in Njurunda, where he had slept with Elin Eriksdotter and wanted to marry her. Her parents did not consent, because they had heard rumours that he had a wife still living. Olof claimed that his wife had died in childbirth and went south to get proof. Instead, he persuaded another soldier to forge the document with unknown names and peasants' marks. The unconvinced local priest, however, refused to permit the marriage. Next Olof turned with his evidence to the rural dean, who authorized the union, and so Olof and Elin got trothplighted and had a child, while Olof's bigamy came to light only some years later.²⁹⁵

Apart from foreigners and migrant craftsmen, soldiers were a special problem who had the task of controlling for impediments. In 1585 the clergy of the diocese of Strängnäs complained to Duke Karl about the marriage practices of soldiers. Apparently, many footsoldiers got trothplighted or betrothed to a new woman and consummated the marriage each time they changed parish. As soldiers were not bound to a certain parish, they disregarded the admonitions and advice of the priests and showed contumacy to the ecclesiastical jurisdiction to which they were cited. Instead they responded with threats and force. The clergy asked, therefore, that the captains and military clerics would keep track of them

²⁹⁴ VDA, VDP A I:2, 19.12.1598, 21.12.1598, 4v–5. See also VDA, VDP A I:2, 10.6.1600, 20.

²⁹⁵ *Tingsprotokoll för Njurunda*, 75–76.

and punish them.²⁹⁶ The complaint that the soldiers were practically immune from ecclesiastical discipline was also heard in other Protestant countries. Moreover, soldiers, seamen and migrant labourers were found to have benefited from the flexibility and 'liminal quality of betrothal'. Although considered binding if both parties insisted, betrothal was not indissoluble. It protected the honour and respectability of both parties, gave some financial protection to both in case of termination, and was in accordance with the demands of public morality.²⁹⁷

In another example, Lasse Smålänning, a servant at the manor of Skafvelsta, had promised marriage to three women and had had a child with all three. As a punishment for his adultery and deceitful conduct, the archbishop had Lasse whipped, thirty-nine lashes, and three buckets of water were thrown upon him. After Lasse had thus been reconciled with the Church, his marriage to the first woman was solemnized. As the other two women had behaved honestly, they were spared ecclesiastical discipline. The underlying attitude was that the women had not been frivolous, but rather impregnated under a promise of marriage. Moreover, they had not known of Lasse's previous promises.²⁹⁸ The visitation records also contain a note of student Andreas Andreae Holmius who roamed around the region fornicating with women and making them promises of marriage that he did not keep.²⁹⁹ Considering the high rates of mobility and the relatively poor communications, 'it was possible for men without too many ties of property or business to leave their wives, settle in some remote area and marry again'. In England, the evil of bigamy was considered to be connected to clandestine marriage or poorly regulated marriage licences.³⁰⁰

At worst, if the existence of an impediment was suspected, or someone spoke out, this could delay the solemnization of the marriage for months or years, although the allegations or rumours were ultimately found to be unsubstantiated. In some cases malicious persons or rejected suitors could spread rumours of the existence of an impediment in order to prevent or hinder the match. In one case from 1596, the

²⁹⁶ The complaints of the clergy, *SSA II*, 30–31, 33; *ibid.*, 20; *Samlingar och anteckningar III*, 161–162.

²⁹⁷ Michison – Leneman, *Girls in Trouble*, 15–16; Gillis, *For Better, For Worse*, 50–51. For similar observations on medieval England, see Donahue, *Law, Marriage, and Society*, 266.

²⁹⁸ Öretompta sochen, *V44*, 146.

²⁹⁹ Rysby sochen, *V44*, 17.

³⁰⁰ Ingram, *Church Courts*, 149, 178–180.

couple had been trothplighted and their banns read from the pulpit. When they and their attendants had come to the church door for the wedding, about a dozen men had appeared, claiming that the wedding couple were related within the fourth degree, while others were ready to swear that the kinship was no closer than the fifth degree. It was conceded that the marriage was permissible because the interruption had occurred 'because of malice and falsehood' unless the twelve swore that the consanguinity was in the fourth degree. The rural dean was to diligently investigate the matter.³⁰¹ The Church also tried to discourage mischievous objections by punishments. The synodal statutes of Västerås of 1596 insisted on whipping in front of the church door all those who invented lies about trothplighted persons with the apparent intention of causing the Church to prevent the union. Occasionally priests could even prosecute such persons for slander at the secular court. At the town court of Vadstena in 1601 the priest, *her* Jören, accused Anders Tårnsson's wife of thwarting the marriage of Hans *snickerdreng*³⁰² and his wife with an unspecified, but libellous 'loose rumour'. As she could not substantiate her allegations, she was fined forty marks reduced to twenty because of her poverty.³⁰³

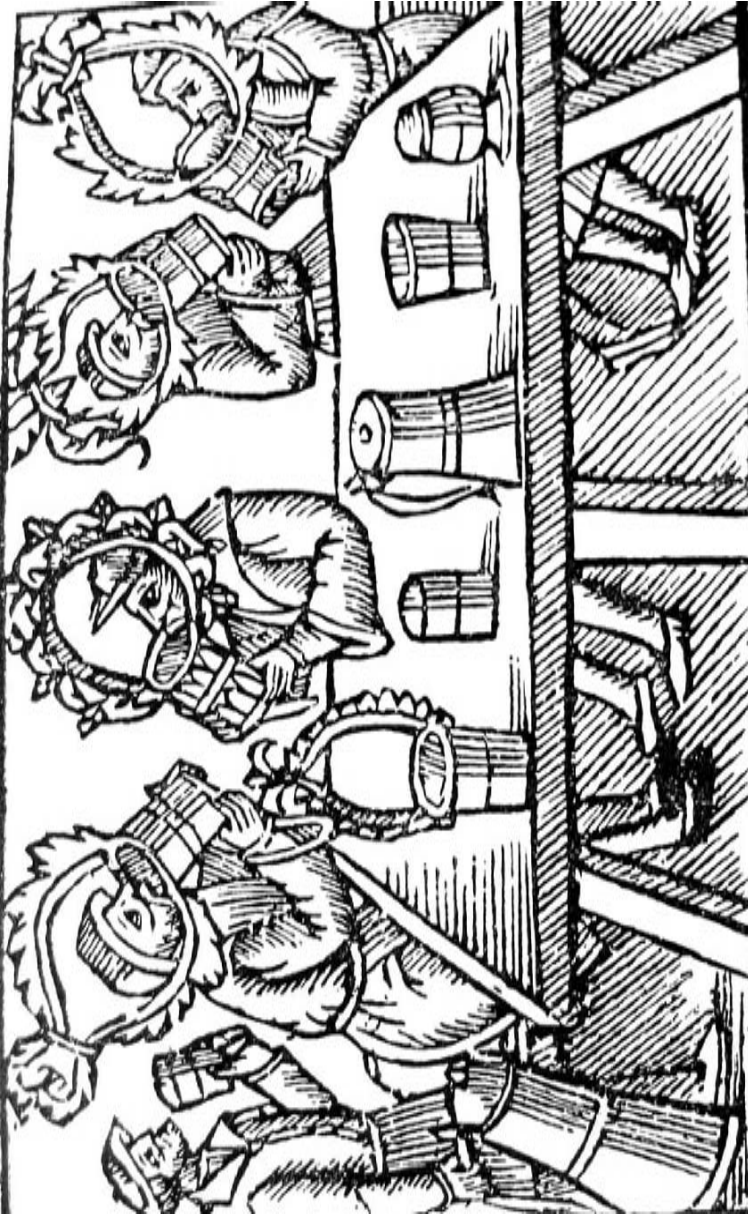
On occasion priests denounced each other for marrying each others' parishioners. Although such diligence may have sprung from the clergy's internalization of the norms regarding ecclesiastical solemnization, it has been argued that this was provoked by a willingness to ensure that the fees went straight to the vicar of the couples' home parish rather than chaplains.³⁰⁴ Military chaplains formed a group outside regular diocesan control and another were the chaplains of noblemen. For example, a woman, who had had an affair with a consanguinous man in the third degree, had taken service with nobleman Krister Clas-son Horn after both the parish priest and the bishop of Strängnäs had refused to marry the couple. Horn, assuming the role of patron, turned to the bishop of Västerås, who also refused dispensation and solemnization. Finally, Horn persuaded his own chaplain to solemnize

³⁰¹ ULA, UDP, 5.2.1596, 105v.

³⁰² *Snickerdreng* means joiner's apprentice or servant.

³⁰³ VDA, VDP A I:1, Synodal statutes of Västerås 1596, 19v; 23.2.1601, *VST*, 304.

³⁰⁴ Lempiäinen, *Piispan- ja rovastintarkastukset*, 184.



7. *De ritu bibendi Septentrionalium populorum* by Olaus Magnus Gothus, Roma, 1555. Heavy drinking was part of any Swedish festivity, which also accounts for many of the acts of violence and homicide that occurred at weddings. Especially the post-Reformation Lutheran church tried to restrict the stag and hen nights on the evening before the ecclesiastical solemnization. The wedding party—and even the priest—was often claimed still to be drunk when entering the church for the ecclesiastical wedding ceremony.

the union, but despite this, the couple was sentenced to death for incest at the secular assizes in 1607.³⁰⁵

'Neglecting God's Word': Limiting Popular Wedding Customs and Festivities

After the Reformation the Swedish clergy started increasingly to pay attention to the propriety of the wedding itself. The Catholic Church had not made any very energetic attempts to regulate the wedding mirth, as its efforts had been focused on ecclesiastical control of solemnization and later in the fifteenth century of engagements. In an effort to sacralize marriage and separate it from the earthly realities, the medieval Church frowned at the excesses of weddings: drinking, merriment, noise, loud music and ribaldries in anticipation of the wedding night.³⁰⁶ The medieval synodal statutes of Bishop Brynolf of Skara (1278~1317) had briefly mentioned that weddings ought to take place reverently and with all honour instead of with jokes and laughter.³⁰⁷ In addition, a fifteenth-century Swedish text on the sacraments taught that weddings were to be celebrated in the fear of God instead of with pride, drunkenness or sexual desire.³⁰⁸ This corresponded with the much later insistence that marriage was to be commenced with prayers for divine mercy, help and blessing and not with frivololity, drunkenness and fornication.³⁰⁹

The main attacks against the unsacramental features of popular wedding customs, however, were launched only in the stricter moral climate of Counter-Reformation Europe by both the Catholic and Reformed Churches. Especially at weddings, calmness was to reign, as Jesus himself had attended a wedding, 'no doubt blessing such occasions with peace, quiet and his holy grace'.³¹⁰ The Swedish Lutheran Church especially disliked the traditional hen parties (*möqväller*, literally maiden's evenings), organized the evening before the wedding, probably under the direction of the matron of honour. In some areas these festive ale-drinking occasions were even called after her (*brudhframme öll*). The bride not

³⁰⁵ Kjöllerstöm, *Guds och Sveriges lag*, 31. See also Synod of Uppsala 1662, *SSA I*, 115; Söderlind, "Lysningspraxis," 73–77.

³⁰⁶ Brundage, *Law, Sex, and Christian Society*, 191; Duby, *The Knight, the Lady and the Priest*, 163–164; Sheehan, *Marriage, Family and Law*, 127, 157.

³⁰⁷ Synodal statutes of Skara, probably from 1278–1317, *SKA*, 62–63. Cf. 83, Statutes of Salisbury (1217–1219), in *Love, Marriage, and Family*, 207.

³⁰⁸ *De sju sakramenten*, 65.

³⁰⁹ *Church Law of 1686*, 15:4. See also *Church Law of 1686*, 15:10.

³¹⁰ Answers to Regimentrådet 1540–1542, 195.

only participated but also sat at the table being served by others. She may have been wearing her wedding finery, including the crown, her hair hanging loose in her back. Both sexes obviously participated and most of the night was spent in drinking and merrymaking. This was one of the concerns of the bishops and the king in 1562. The peasants of Uppland, they claimed, made unchristian uproar and improper noise on Saturday nights at indecent hen parties, which caused much riding and running about, cursing and swearing, even homicides on occasion. All parish priests of the Realm were to forbid the feasts, and if the parishioners persisted and came drunk to church on Sunday, the clerics were to refuse to solemnize the union that day. Excommunication and treating the culprits 'like heathens' until they repented were also prescribed.³¹¹ During the visitation of 1596 the prohibition of hen parties was repeated in the parish of Moratorpa. The priest was told to refuse to perform divine service to his disobedient parishioners and if the recalcitrance was widespread, he was to deliver the church keys to the chapter of Linköping so that the whole parish would be excommunicated *de facto*.³¹²

Later the clergy specified the evils caused by the hen parties that they particularly resented. Not only were they generally improper and took place in the wrong time, but the wedding guests were accused of excessive drinking and being guilty of improprieties all night long. As the solemnization seems customarily to have taken place on Sunday or a feast day, people were not at their best at the service the following morning. These wedding parties caused inconvenience and offence by drunkenness in church, as the participants could be disinclined to hear the word of God and serve Him.³¹³ The wedding party was also likely to oversleep in the morning and be late for the Sunday service. In order to minimize the disturbances after the singing of the Creed or the sermon had begun, those of the wedding party who arrived late

³¹¹ 11, Summary of the negotiations of the bishops at the council of the nobility at Stockholm in 1562, *SRA II:I*, 61–62. See also the Synods of Strängnäs 1592, 1613 and 1645, *SSA II*, 55, 68 and 165; Söderlind, "Svenska," 17–20. In the late sixteenth century the matron of honour (*brudsetta*; *brudfrämja*) occasionally even lent the wedding finery, Heikinmäki, *Suomalaiset häätavat*, 302–303.

³¹² Moratorpa sochen, *VAA*, 11.

³¹³ Ordning om echtskapet, *KO 1571*, 123; Synod of Strängnäs 1584, *SSA II*, 14; De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 7, *SSA I*, 20. See also the synod of Uppsala 1644, *ibid.*, 69.

were to stand in the aisles or in their pews.³¹⁴ One avowed reason for this control was to prevent people from staying up all night and therefore missing the Sunday service. Another was that the wedding party was not encouraged to go to Communion on the Sunday of the wedding, but rather on the previous or subsequent Sunday, 'as on the wedding days, through wedding get-togethers (*bröllopsprång*)³¹⁵ and ceremonies, they can easily be prevented from the serious deliberation everyone should have' before coming to the Lord's Supper.³¹⁶

It was unrealistic to suppose that wedding festivities could be abolished. The Church conceded that people could be served a meal the previous evening provided they did not drink and sit up well into the night, thus neglecting God's word.³¹⁷ Some statutes even went into minute instructions about the eating and drinking.³¹⁸ If the wedding was celebrated in church, this took generally place on Sunday in the later Middle Ages and during the sixteenth century, but the authorities decreed that nobody was to continue the celebration after Wednesday evening. The penalty for doing so was a forty-mark fine, which in practice was occasionally levied.³¹⁹ In the synod of Strängnäs in 1618 Bishop Laurentius Paulinus Gothus exhorted the pastors to see to it that no marriages were celebrated in the congregations at the time of the diocesan synods, so as to prevent clerics from having an excuse not to attend the synod.³²⁰

This policy was part of the ongoing general attempts by the Crown and clergy to restrict luxury and pomp in feasts and clothes. In 1546 King Gustav Vasa expressed his concern about the squandering of his people 'in these hard times'. Not only were the vanity and pride

³¹⁴ De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 7, *SSA I*, 20–21; Synod of Strängnäs 1584, *SSA II*, 14. See also 21.10.1629, *Kulturella interjörer*, 5.

³¹⁵ According to Dahlgren (*Glossarium*, 796), *språnga* actually means to embroider or make lace. However, I have interpreted it here as a reference to the socializing of women in the hen parties, during which the young women could be occupied by needlework.

³¹⁶ Synod of Uppsala 1608, 5 and De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 5, *SSA I*, 14, 19. See also Kyrko-ordning för Vexjö Stift 1619, *ES VIII*, 600–601.

³¹⁷ E.g. the synod of Uppsala 1644, *SSA I*, 69; Söderlind, "Svenska," 20–24.

³¹⁸ Lundström, *Laurentius Paulinus Gothus*, 290. See also Synod of Västerås 1648, *Undersökningar och aktstycken*, 111.

³¹⁹ *Tingsprotokoll för Njurunda*, 56; Taussi Sjöberg, *Rätten*, 54. For Estonia, see Tedre, "Eestiläiset häät," 81.

³²⁰ Lundström, *Laurentius Paulinus Gothus*, 169.

of the common people attacked and forbidden, but also the excesses of weddings and feasts. People were spending their savings in arranging such overly splendid occasions and wasting many working days that could have been spent working in the fields or fishing. The king lamented that even the poor arranged as magnificent wedding feasts as the rich and impoverished themselves in the process. Especially among peasants and burghers such excesses were forbidden on pain of royal displeasure and wrath. Weddings and funerals were the most lavish of such family parties, but baptisms and churchings were also mentioned although banquets in connection with them could not successfully be banned altogether. Such 'great and sinful luxury', causing too much expense and impoverishing people, could not be endured, and attempts to limit the number of people attending, gifts given, food served and days celebrated were made, especially in the seventeenth century. Above all, the nobility was accused of organizing lavish and luxurious feasts, but none of the estates was without blemish in this regard. In addition, such feasts were perceived as focal points of drunkenness, disorder and crime, accusations often corresponding with reality.³²¹

Estates were graded according to their wealth, status or position, and the seventeenth-century sumptuary legislation contained minute provisions on the luxury allowed for each group. Yet, the grading of permitted luxury, dishes, foodstuffs and cloth strongly suggests that the developing Swedish class society used these statutes to stabilize and preserve distinctions between the estates. Indeed, this was one of the acknowledged functions of 'social disciplining' (*Sozialdisziplinierung*) through sumptuary legislation, which became one of the subjects of policy ordinances.³²² In the 1572 marriage law of Hohenlohe the number of tables for the marriage festivities was limited according to the joint conjugal fund: the wealthier the couple the more tables they were allowed. However, these norms were rarely given any practical consideration.³²³

Simultaneously, in Sweden the restrictions concerning popular celebrations and the mirth of feasts were part of a general trend to improve the solemnity of ecclesiastical rites, which were characteristically marked by sobriety, deliberation and the fear of God. Unlike

³²¹ 4.4.1546, *GFR* 18, 31, 42–44; Söderlind, "Svenska," 43–52; Lempiäinen, *Kastekäytäntö*, 72–75.

³²² Stolleis, *Geschichte*, 338–339, 348, 370; Roper, "Going to Church," 79–80; Killerby, "Practical problems," 118–120.

³²³ Robisheaux, *Rural society*, 117–118.

some other Lutheran regions, where dances and feasts were perceived as occasions for young people to fall into sin and unsuitable relationships, the Swedish clergy hardly targeted especially them.³²⁴ People also neglected attending church altogether or arrived late or drunk. Wild dancing and noisy merrymaking were looked at disapprovingly. Such excessive outbursts of emotions were intolerable to the Post-Reformation Churches, which began to pay increased attention to the solemnity and propriety of popular wedding customs. This trend was by no means restricted to the Reformed churches.³²⁵

The English Puritans and Scottish Calvinists also insisted that the wedding party enter the Church reverently and decorously: the grievances included (bag)pipers and fiddlers accompanying the couple to church and back, and the throwing of grains of corn on the couple. This was a 'great dishonour of God' and the priest was to refuse to marry the couple under such circumstances. On the excuse that drunkenness and gluttony were prevalent, some presbyteries tried to limit the wedding expenses. In addition, if the wedding dresses were too grand or a train of virgins escorted the bride, the participants were to be punished and solemnization refused. Such 'vain and licentious' behaviour was found to abuse 'the honourable bond of marriage'. Nevertheless, there are only a few indications that the Church tried to enforce such norms. It was impossible to uproot certain fundamental features of popular culture.³²⁶

In Sweden, even couples with modest means were expected to organize a proper wedding feast, including mountains of food, while drinking ale was a feature of every festivity. Couples therefore had to strain their resources and even rely on the traditional customary solidarity of the countryside, for example, by collecting 'bride help'. This custom probably existed already in medieval Sweden although there is more evidence from the early modern period. Women about to be married visited the houses of her relatives, the village or the larger region asking for goods or food for the coming marriage. This custom undoubtedly contributed to bearing the costs of the customary big wedding feast and the aspect of communality, but it also added to the publicity of

³²⁴ For an example of Lutheran rural youth control, see Robisheaux, "Peasants and pastors," 289.

³²⁵ Harrington, *Reordering marriage*, 206–214; Roper, "Going to Church," 70.

³²⁶ Thomas, *Religion*, 75; Graham, *The Uses of Reform*, 172, 181–182, 228; Michison – Leneman, *Girls in Trouble*, 40.

the union of the marriage process because through it the larger community was informed of the coming wedding and the girl's change of status.³²⁷ The gifts given varied considerably. In a late sixteenth-century case relating to larceny committed against a maid who had been collecting her bride help (*gå brudstyg*), the thief was reported to have stolen a wreath (*kran*), a spoon, a ring, two chains and one sheet.³²⁸ In many Swedish and Finnish regions the bride customarily gave gifts to her in-laws, the main participants in the wedding ceremonies, and wedding guests. These gifts she made herself before the wedding, thereby demonstrating her ability as a seamstress. Therefore, the bride help often consisted of flax, wool, cloth or yarns for preparing the dowry and gifts.³²⁹ Those contributing to the wedding expenses were supposed to be invited to the wedding in return.³³⁰

The clergy came to disapprove strongly of this custom probably because they associated the collecting of bride help, for example corn, as beggary. 'Loose sluts' were forbidden to collect bride help in the diocese of Strängnäs in 1584. Maidens collecting bride help were forbidden to make extensive rounds and told to restrict themselves to their home parish.³³¹ Later statutes emphasized that the maidens had to be solemnly betrothed in church and, if the trothplight was dissolved without sufficient reason, they had to give what they had collected to the church and the paupers. When, in the late seventeenth century, the custom became increasingly popular even among unbetrothed women, the peasants of some regions became fed up with it. The clergy and nobility resented that vicarages or manors were not excluded. In addition to the efforts of the Church, secular courts also attempted at least to limit the custom of asking for bride help to relatives only.³³² Collecting

³²⁷ Kjellman, *Bröllopsgåvan*, 105–123; Sarmela, "Suomalaiset häät," 26.

³²⁸ 5.10.1596 Hölebo, *Sörmländska hävads domböcker från 1500-talet*, 56.

³²⁹ Kaivola, *Kahden kauppa*, 37–38, 75, 80, 122, 128, 176, 179; Kjellman, *Bröllopsgåvan*, 39–40; Heikinmäki, *Suomalaiset häätavat*, 178–193, 540–573. The gifts could be socks, mittens, ribbons, shirts, handkerchiefs, aprons, and scarves. The bride help was also a collective feature of Estonian and Russian wedding customs, Tedre, "Eestiläiset häät," 81–82; Cistov, "Pohjoisvenäläiset häät," 119.

³³⁰ Sarmela, "Suomalaiset häät," 39; Heikinmäki, *Suomalaiset häätavat*, 182.

³³¹ Synod of Strängnäs 1584, *SSA II*, 37; Synod of Strängnäs 1620, *ibid.*, 85. See also *CEAP*, 391.

³³² Conclusiones Generales ca. 1650, *Norrländska kyrkostadgar och synodalakter före 1812*, 135; Söderlind, "Svenska," 14–17; Westerlin, "Västerhaninge och Muskö," 191; Pytkänen, *Puoli vuodetta*, 246.

bride help was one of the traditional marriage customs mirroring the collectivity of the agrarian society under attack at all fronts.

Part of this campaign was the Lutheran Church's depreciation of the blessing of the nuptial bed. The bedding took place in the midst of the revelry of the wedding night and the Church felt that the people did not show sufficient reverence and respect for the ecclesiastical rite. Therefore, the blessing was unnecessary and voluntary. Moreover, if the blessing of the nuptial chamber was performed, the priest could leave out some elements of the ritual if the wedding guests were in a too festive mood. In any case, the Church considered it scandalous and dangerous for older people that the newly married husband leaped to bed. The clergy was to dissociate the blessing of the nuptial chamber with the secular bedding of the bridal couple.³³³ Nevertheless, the ecclesiastical efforts to bridle popular wedding festivities was limited at best as '[s]ecular ritual held the formality and dignity of the wedding in creative tension with the anarchic exuberance of feast and dance, just as the institution of marriage held the forces of sexuality in uneasy check'.³³⁴

Resisting Ecclesiastical Solemnization: Protest, Poverty or Discord?

After more than three centuries of propaganda for ecclesiastical presence in the wedding ritual, solemnization had become more common. In Sweden, the Church was undoubtedly most successful in bringing the upper classes into conformity to its ideal of a public engagement, a relatively short interval between the engagement and the ecclesiastical solemnization, and no consummation or cohabitation in between. This is no surprise, considering the medieval evidence of the growing popularity of marriage *in facie ecclesiae*, but it also corresponds with the development in Protestant towns like Basel, where the social pressure and control must have been even more effective.³³⁵ This does not mean that the Swedish Lutheran Church did not try to remedy the situation, especially in the seventeenth century. The synodal council of Strängnäs resolved that betrothed couples who refused to marry would be put into interdict until they repented and changed their mind. The clergy was also willing to fine the couple, but they finally conceded that this

³³³ *KO 1571*, Ordning om echtskaptet, 123–124; Knuutila, *Avoliitto*, 551–556.

³³⁴ Roper, "Going to Church," 81.

³³⁵ Ozment, *When Fathers Ruled*, 37.

aspect fell under secular jurisdiction.³³⁶ In the 1630s, the chapter of Linköping is known to have persuaded couples wishing to dissolve their engagement by a short spell in prison. In many cases the trick worked and the couple requested immediate solemnization.³³⁷

Certain known examples of Swedish noble couples anticipating the wedding after a betrothal or trothplight would indicate that this surely was out of the ordinary. Anna Fleming's and Hieronymus von Birckholtz's marriage negotiations had been going on for some time and the couple had already been betrothed, but Anna's uncle, Klaus Fleming, seems to have kept stalling for time. Either he thought the match beneath his niece or he wanted Anna to stay unmarried so that he could administer her inheritance indefinitely. Obviously the couple decided to put pressure on the uncle to precipitate matters: they had sex, and their first son was born before they solemnized the marriage.³³⁸

As for the common people, there was a considerable minority, the size of which is impossible to estimate, that resisted ecclesiastical pressure to solemnize their weddings. The court records of Karelia show that many betrothed couples lived together without having ever 'married'. At one session of the assizes at Kivennapa twenty-seven men were fined for this offence. One peasant was fined forty marks for sleeping with his wife for thirty years without an ecclesiastical wedding ceremony.³³⁹ It seems that such men were not fined three marks according to law for prenuptial fornication, but rather for violation of a virgin. This may have been part of local efforts of the Crown (and the Church) to enhance the status of the ecclesiastical wedding and simultaneously fill the coffers of the Crown.

The minister of Vadstena, Jesper Marci Alanus complained at the town court that, in accordance with both 'God's ordinance' and the Church Ordinance, he had from the pulpit diligently exhorted those couples who were betrothed but had not solemnized their union to 'better themselves' with the ecclesiastical rites. Jesper Marci's words were met with recalcitrance: not wishing to obey, some of his listeners answered with defiant and scornful words. The town council told the

³³⁶ Synod of Strängnäs 1583, *SSA II*, 4; Synod of Strängnäs 1585, *ibid.*, 26; Thomson, *Otidigt sängelag*, 22.

³³⁷ Söderlind, "Lysningspraxis," 67.

³³⁸ Lahtinen, "Omaisuuutta," 362–363; Lahtinen, *Sopetuutwat*, 160–166.

³³⁹ Pirinen, "Keskiajan ja 1500-luvun," 41. Cf. Mäkelä, *Suvusta perheeseen*, 113–114.

priest to repeat his exhortation from the pulpit and then let Anders Grijs, the governor of Vadstena Castle know who these stubborn people were, so that the matter could be dealt with at the town court.³⁴⁰ As the case did not resurface in the court records, it remains unclear whether the opposition prevailed or whether the threat of interference from the secular arm was enough to pressure the couples towards the altar. Later evidence indicated that Alanus's colleague Klemens Laurentij Gevaliensis, minister at Vadstena from 1577 to 1597, had limited success in making townspeople tie the knot through ecclesiastical solemnization. The visitation records of 1596 reveal that 15 couples were denounced as being betrothed or trothplighted and having had intercourse with their wives without ecclesiastical benediction. Seven of these unions were immediately solemnized.³⁴¹

As the Church and the community both accepted that betrothal or trothplight followed by intercourse made an indissoluble marriage and that the children born of such a union were legitimate, there was no actual hurry or necessity to involve a priest. Some ecclesiastical rites were obligatory, such as baptism and burial, but others were more or less optional. Perhaps some couples perceived ecclesiastical solemnization as useless in this sense. It must be remembered that for some poorer couples the costs of the solemnization could be an extra burden, as both the priest and the parish clerk (*klockare*) were to be remunerated for their services. Moreover, if the couple had not yet arranged their wedding feast, they could be expected to invite their relatives, neighbours and friends after the solemnization at the latest. Some statutes tried to take this into consideration. In 'hard times' and crop failure, the poor of Våxjö were allowed to solemnize their marriages, christen their children and church their wives without great feasts and expense.³⁴² But it is unclear whether this meant that they need not pay the ecclesiastical fees.

Despite the Church's efforts and professed willingness to have people solemnize their marriages, in the course of the seventeenth century the clergy increased its demands on couples wishing to marry.³⁴³ But there were groups that the Church would not marry, for example those who had committed notorious crimes or persistent sins (such as disturbers

³⁴⁰ 3.12.1578, *VST*, 21.

³⁴¹ Vadstena stad, *VAA*, 134.

³⁴² Circular of the diocese of Våxjö 1584(?), *Undersökningar och aktstycken*, 53.

³⁴³ Cf. Knuutila, *Avioliitto*, 223–225.

of the peace, those who seldom attended divine service, etc.) that could entail excommunication. The clergy was forbidden to publicize their banns or solemnize their marriage.³⁴⁴

Another reason for a refusal to solemnize might have been anticlericalism and resistance to ecclesiastical control. The visitation records of Archbishop Abraham Angermannus of 1596 list many persons in Vadstena, who were scornful of the sermon and sacrament. This may indicate that these persons were indifferent to religion or to the established Church. At least one of these men was accused of not having wedded his wife in church.³⁴⁵ Måns Olsson of Graby, who was litigating with the Church for some land, claimed that he had been prevented from solemnizing by his military service, but he declared his willingness to solemnize around the feast of Saint Michael.³⁴⁶ When the bishop of Västerås interrogated Lasse Knutsson about his marriage, he was also asked about his religion probably as a suspected nonconformist. He admitted that he and his wife were 'lawfully trothplighted and betrothed, but not solemnized'. He went on to assure that he 'had and loved no other [religion] than the one confirmed at the Council of Uppsala by the estates in 1593 and 1594'. Lasse declared his willingness to solemnize at his earliest convenience.³⁴⁷

Another group not allowed to solemnize were those who professed another religion; for example, Catholics or Calvinists wishing to contract with Lutherans. When two Stockholm servants wished to get married, the Stockholm chapter hesitated to permit this as both parties had been in the service of Papists and Calvinists. Both assured, however, that they had never believed in their masters' heresies and always attended church and Holy Communion willingly. After an investigation, the couple was permitted to marry. The chapter of Uppsala did not allow Andreas of Drottningholm to marry the daughter of Nils *Winteppare*, '*infidelis cum fidei*' before he renounced his fallacies (*wilfärelse*).³⁴⁸ Drottningholm was at the time a pocket of Catholicism and eyesore of the chapters of Uppsala and Stockholm. Thus, it would seem probable that Andreas was a (crypto-)Catholic.

³⁴⁴ Synod of Uppsala 1572, *BSKH*, 24–25.

³⁴⁵ Vadstena stad, *VAA*, 133–134. See also Aleff sochen, *VAA*, 94.

³⁴⁶ Sundh sochen, *VAA*, 89.

³⁴⁷ VDA, VDP A I:2, 5.12.1599, 16v.

³⁴⁸ SStA, SDP A I:1, 15.12.1597, 108–109; ULA, UDP, 14.2.1599, 151. Cf. Knuutila, *Aviolitio*, 204–206.

Quarrelsome couples also seem to have delayed or avoided the completion of the marriage process by ecclesiastical solemnization.³⁴⁹ For some reason or another there was strife between the couples and subsequently, one partner resisted solemnization although there was no doubt that indissoluble marriage had already been created between the couple through trothplight or betrothal and consummation. In these cases the several years of stalling or refusal to go through the ecclesiastical rites were another symptom of serious spousal disharmony. For example, Erik of Gäfwerstada had renounced his trothplighted fiancée after they had had intercourse and she had lived some time in his house until she had given birth to their child. Erik had accused her of theft, but she had successfully purged herself of the accusation. The couple was, according to law and custom, pronounced married and they were persuaded to have their union solemnized at the visitation. Erik was also threatened with fustigation if he mistreated her. The next day, however, he refused to receive his wife, threatening her and her messengers with a bare sword and abusive words: if she entered his house, he would be her death.³⁵⁰ When the chapter of Västerås intervened, the footsoldier Erik and his 'trothplighted wife' Brita had been living for three years together 'mostly in great discord' without betrothal or solemnization. A reconciliation was brought about between the spouses by the chapter in the presence of the bishop, his penitentiary and two mayors of the town, among others. The chapter took advantage of this occasion and induced the couple to step out of the chapter's meeting room into the sacristy, where they were betrothed and their union solemnized by a priest. Two men stood surety that the couple would mend their ways.³⁵¹

The relationship between Christoffer *Badstufukarl*³⁵² and Valborg Jönsdotter, widow of Matts Svärd, was patched up by the Stockholm chapter in 1599. The couple had pledged each other their troth in the presence of the priest Knut and one witness from each side, they had taken each others' hand and lawful gifts had been given. After the trothplight the couple had had intercourse. The chapter's resolution was evident: the couple was to be reconciled, as they could not be

³⁴⁹ For some indications of similar patterns in the English sources, see Wunderli, *London Church Courts*, 121–122.

³⁵⁰ Lööth sochen, *VA4*, 192. See also Hult sochen, *VA4*, 103.

³⁵¹ *VDA*, *VDP A I:1*, 9.3.1599, 64v; *VDA*, *VDP A I:2*, 9.3.1599, 9v.

³⁵² *Badstugukarl* is a 'bath master', master of the baths, *badmästare*.

put asunder by anyone. The widow Valborg Jönsdotter seems to have been having second doubts about the match, and the following summer Christoffer approached the chapter requesting that the marriage would be completed through solemnization. Valborg resisted. The chapter urged the couple to live together in concord and harmony and Christoffer was told how he ought to behave towards his wife. Both agreed to conduct themselves better in the future and it was agreed that the party who broke the agreement would have to stand before the church door as punishment. Both also promised to hurry in organizing the wedding.³⁵³ The following winter Christoffer was denounced to the chapter for behaving towards his wife in an unchristian manner. He was reminded of the agreement made before they were joined together (*tillsamman kommo*) that the party that mistreated the other would have to perform penance. In addition, the chapter sent him to be detained in the castle.³⁵⁴ In this case Valborg had obviously learned after trothplight and intercourse that living together with Christoffer was not going to be a bed of roses, probably making her reluctant to solemnize. On certain other occasions it was the man who kept stalling and avoiding the ecclesiastical ceremony. At this point, the wedding ceremony combined with ecclesiastical solemnization was probably perceived as an absolute end to the marriage process to the extent that this was to be avoided if couples experienced problems in their relationship.³⁵⁵

In other cases, the omission of ecclesiastical ceremonies might have been a result of suspected or known impediments. If the impediment did not become public knowledge, the couple could contract marriage without solemnization and pass muster without the legitimacy of the marriage and children even being contested. The local communities could be sympathetic towards the couple in cases of remote kinship or affinity: requests for dispensations occasionally backed up with mentions that fellow parishioners had pleaded for the couple. The local *nämnd* or lay jury of twelve men ‘requested in a friendly way’ that Erik Östensson and his ‘trothplighted woman’ be allowed to stay together. They had got trothplighted four years previously, not knowing of their consanguinity in the fourth degree, and had conceived two children together. They had wished to ‘conclude the marriage the ecclesiastical

³⁵³ SSStA, SDP A I:1, 28.11.1599, 156; SSStA, SDP AI:2, 23.7.1600, 6.

³⁵⁴ SSStA, SDP AI:2, 7.1.1601, 21.

³⁵⁵ See also *KO 1571*, Ordning om Ehtenskapet, 122.

way', but then the impediment was discovered and the vicar and rural dean had prohibited solemnization.³⁵⁶

Ignorance can hardly adequately explain the failure to solemnize, although theoretically either or both could be performed by a cleric in church. During the visitation of 1595 one man swore to have solemnized his marriage, but in reality he had only been betrothed in a house on Norrmalm in Stockholm. He was recorded to be unable to distinguish between betrothal and solemnization.³⁵⁷ If the man really was as ignorant as he professed, his was an exceptional case. The overwhelming majority of the people understood well the different stages of marriage formation and took advantage of the full scale of available possibilities. Ecclesiastical solemnization, though optional, was the final step in creating the marriage bond. Moreover, it entailed the clerical scrutiny of possible impediments. It was precisely for these two reasons that many people avoided solemnization. Despite certain problems in dealing with the obstinate, the chapters displayed a considerable willingness to pressure married couples to solemnize.

4.6 *The Marriage Process and Sexual Crime: Policing Illicit Intercourse*

The Swedish Reformation transferred all sexual crimes to the secular sphere, although falling short of categorically forbidding the Church to punish them. Once the secular authorities had assumed the jurisdiction over sexual crime, it was in the interests of the Crown to make use of this power. In the sanctioning and punishing of crime, the Crown acted out of a combination of moral and ethical considerations (religious motivations, atonement, fear of the wrath of God and retribution) and ruthless practicality (crime as a source of income, control and power). Reputedly not even the North American Puritan colonies demonstrated such zeal in respect to religious moral issues as the Swedish authorities did during the seventeenth-century Swedish Orthodox era.³⁵⁸

Slowly the right to determine the punishments for crime was taken away from the local community and assizes and came to be exercised by the king and representatives of the royal judiciary. Late sixteenth-century legislation emphasized that the punishments were to be meted

³⁵⁶ ULA, UDP, 17.3.1596, 112. See also e.g. ULA, UDP, 1.8.1595, 53v.

³⁵⁷ Glömminge sochen, *VAA*, 33.

³⁵⁸ Sundin, *För Gud*, 136.

out as prescribed by law, and that the mitigation of the rigours of the law and the prerogative of pardon belonged to the king.³⁵⁹ This, however, would not alone have sufficed to result in the considerable increase of criminality if *ex officio* prosecution of crime had not become so common. In Swedish tradition the injured party had the decisive role in determining the condemned offender's punishment not only in law, but even more so in practice. Most sexual crimes had come to court only when the relationship produced a child, the couple was caught *in flagrante*, or the injured party decided to press charges. Now the royal bailiff was increasingly pressing charges in court, thereby overseeing the Crown's interests in part of the fines. Later, the clergy was on the lookout for and reported sexual offenders.

With the merging of ecclesiastical ideology and the system of control created by the secular power the proportional and absolute amount of prosecuted sexual crime skyrocketed during the late sixteenth and seventeenth century. However, the timing of this rise increase depended on the region, and regional variation and the distance from the central authority must be taken into account here. The dramatic increase in the prosecution of sexual crime is also vividly demonstrated by the statistics reported by Heikki Ylikangas. In general, between 1551 and 1600 the percentage of sexual crime fluctuated between 0.7 and 5.2 per cent of all crimes in the hundreds of cases that Ylikangas analysed. While in Lohja the percentage of sexual crime was 0.3 in the period 1601–1625, between 1626 and 1650 the percentage of sexual crimes had dramatically increased to 40.4 per cent of all crimes.³⁶⁰ While sexual crime accounted only for a small percentage of medieval criminality in Stockholm and Arboga, the rate of sexual crime was about twenty per cent in the late sixteenth and early seventeenth century. In Stockholm the percentage peaked at slightly over ten per cent in the 1540s–1550s and 1580s–1590s.³⁶¹

These observations have been supplemented by other researchers. According to Rudolf Thunander's study of a hundred in Småland, where sexual crimes had earlier been rarely reported, in the 1610s they constituted 36 per cent of all reported crimes. In the period 1635–1649

³⁵⁹ See also Kotkas, *Suosioista ja armosta*, 102–124.

³⁶⁰ Ylikangas, "Väkivaltarikosten motivaatiopohja," figure 2, 103. See also Suvanto, *Yksilö*, 423, n. 84.

³⁶¹ Österberg – Lindström, *Crime and Social Control*, 43–44, 47, 53–54, 123–124, 153.

over two-thirds of all cases referred to the Göta Court of Appeal were sexual crimes.³⁶² The findings of Taussi Sjöberg for Njurunda are less dramatic: sexual crime was at its highest (slightly above 10 per cent) in the 1610s and 1620s. In the records of the hundred of Porvoo there was a considerable increase in sexual crime during the seventeenth century. While the percentage of sexual crimes had only been one per cent in the 1620s and early 1630s, from the late 1630s and 1640s onwards, they constituted more than twenty per cent of all crimes. However, before 1660 the focus of the prosecution was on adultery, while fornication was not systematically prosecuted in the whole area until the 1660s.³⁶³

While medieval law had considered the marriage guardian as the injured party when a virgin was violated (*mökränking*), during the course of the sixteenth century this crime was increasingly seen as a moral offence on a parallel with fornication, and it was prosecutable *ex officio*. But even after the reception of the Mosaic Law in 1608 the violated maiden was considered the injured party in accordance with the paragraph in Exodus.³⁶⁴ Although in 1615 the king had ruled that female first offenders could not be punished for fornication, the practice varied considerably. There seems to have been no legal foundation for punishing female first-time fornicators, and probably due to moral rigour of the Orthodox Lutheranism a more severe practice had developed. In many regions women were punished for fornication only when they repeatedly committed the crime.³⁶⁵

In addition, due to the strict application of the law in lower courts, the country was inundated with death penalties for adultery. Between 1635 and 1644 the lower courts submitted 1.000 death penalties to Göta Court of Appeal, one of the three Swedish Courts of Appeal (omitting Dorpat). More than 55 per cent of these death penalties had been meter out for simple adultery and, as the cases involved two parties, that meant that over 1.100 persons risked losing their lives for

³⁶² Thunander, *Förbjuden kärlek*, 17–18, 21; Sundin, *För Gud*, 42. See also Thunander, *Hovrätt*, 94.

³⁶³ Taussi Sjöberg, *Rätten*, 219; Aalto, *Kirkko ja kruunu*, 58–60, 62–65, 228–230.

³⁶⁴ Almquist, “Karl IX och den mosaiska rätten,” 1, 30; Pylkkänen, *Puoli vuodetta*, 105–106. See also Aalto, *Kirkko ja kruunu*, 104–107.

³⁶⁵ Gustav II Adolf's resolution to the Svea Court of Appeal (23.6.1615), *Köngl. Stadgar 1528–1701*, 164; Pylkkänen, *Puoli vuodetta*, 106–108, 131; Lindstedt Cronberg, *Synd och skam*, 85–86; 2.1.1694, *Köngl. Stadgar 1528–1701*, 1357; Lennartsson, *I säng och säte*, 276–278, 318; Aalto, *Kirkko ja kruunu*, 110–119.

the crime. The result would have been catastrophic had not the Courts of Appeal used their power of mitigation and arbitration (*leuteration*), converting the punishment into heavy fines. On the other hand, the Court of Appeal usually confirmed the death penalty for double adultery and bigamy.³⁶⁶ As it is hardly possible that the morals of the Swedish people had collapsed during the period, the previous low level of vigilance is the best explanation for the increase of recorded crime. Earlier, sexual infractions had been predominantly settled informally outside the court. Now, official prosecution ensured that the cases were taken to the assizes, while from 1614 onward the Courts of Appeal ensured that the cases were judged according to the law.

As mentioned above, regional variation was considerable. In late fifteenth-century Stockholm *ex officio* prosecution was practiced, and the town elite was apparently zealous in using official investigations as a means of controlling criminality in the lower classes.³⁶⁷ The wave of increased control did not reach most parts of Finland until the seventeenth century although some regions had been more precocious in prosecuting sexual crimes than others. The statistics show that the courts on the Åland Islands between Sweden and Finland prosecuted sexual crimes quite frequently in the 1530s and 1540s (16.2 per cent of all crimes), which was about the same level as in Uppland. Ostrobothnia was another area in Finland where sexual criminality was more effectively prosecuted in the late sixteenth century (18.3 per cent of all crimes in the 1580s).³⁶⁸ The rest of the country experienced a similar upsurge of sexual crime in the seventeenth century. In addition to the differences between the regions and hundreds, there were differences within each hundred. Whether this was due to the more efficient vigilance of the clergy or a stricter inner social control, the influence of the Church was probably behind this.³⁶⁹

Concubinage, without betrothal or trothplight, was not a rarity. For example in a court case in Enköping from 1541 the accused was identified as Elin, Wolff's concubine (*Bolskap*).³⁷⁰ Nor do the court records of Turku from the 1620s demonstrate a very strict attitude towards concubinage, which occasionally came to court when the man wanted

³⁶⁶ Thunander, *Förbjuden kärlek*, 27–28, 92–93.

³⁶⁷ Lamberg, "Säädylisyyden vartijat," 71–78.

³⁶⁸ Lehtinen, *Hallituksen yhtenäistämispoliitikka*, 81–82, 179, 237–238, 252.

³⁶⁹ Suvanto, *Yksilö*, 423.

³⁷⁰ 1.6.1541, *EST*, 9.

to discard his lover. The *concubina* could take the matter to court so that her man would be sentenced to pay alimony for his children. Alternatively, the man was tried for violating of a virgin. Frans Stockman, who had 'seduced and had intercourse' with Anna Eriksdotter, was exhorted by the court to marry her and honour her with what was reasonable. As Stockman refused to marry her, he was to give Anna twenty *dalers* as compensation and fined forty marks for violation of a virgin. Both were to be expelled from the town: the man because the injured party did not speak for him, the woman because she had entered the town without permission, having been banished before.³⁷¹ When Thomas Träll prosecuted two of his servants for fornication, the court observed that the man had 'given her nothing, neither had she demanded anything of him nor had he promised anything to her, but intercourse with shame' (*sengelagh medh skammen*). He was accordingly sentenced for violation of a virgin. Both were to undergo ecclesiastical penance and appear at the Turku chapter, as the woman pleaded for him and believed that marriage could be brought about with the help of the clergy.³⁷²

Matrimony, Sexual Crime and the Church: A World of Absolutes

For the Lutheran Church, sexuality was a world of absolutes: what was not yet marital sexuality must thus be extra-marital. As fornication was the negative of matrimony, the definitions of the two were fundamentally interconnected. An example of this is the relatively common crime of fornication (*lagersmål* or *lönskaläge*) or violation of a virgin (*mökränkning*; *jungfrukränkning*), which after the Reformation generally came under the jurisdiction of the secular courts even if the Church could force the offenders to submit to ecclesiastical discipline as well. However, if either party claimed that a promise of marriage had been made, that issue was transformed into a marriage contract dispute and transferred to the ecclesiastical forum. This could be problematic in Sweden, however, as the flexible marriage process posed problems for these clear-cut definitions.

As argued above, the influence of the ecclesiastical doctrine of exchange of informal consent had undermined the monopoly of the

³⁷¹ 19.7.1624, *UÅD* 1624–1625, 43; 6.10.1626, *UÅD* 1626–1632, 12 and 15.11.1626, *ibid.*, 16. See also 27.11.1624, *UÅD* 1624–1625, 71; 3.3.1625, *ibid.*, 108.

³⁷² 24.7.1628, *UÅD* 1626–1632, 36.

Swedish traditional formal betrothal as definer of binding contracts. Like elsewhere in Europe the contested promises of marriage came to keep to ecclesiastical courts busy. Consequently, a portion of the disputed marital contract cases in the late sixteenth-century church courts involved more vague and unwitnessed promises, which the female party usually claimed but failed to prove satisfactorily. The scenario was that the seduced woman, who often was also pregnant or had given birth to a child, claimed that a promise of marriage had preceded sexual intimacy. The man, however, regularly denied the promise of marriage, but he tended to admit to the sexual relations.

As discussed above, the late sixteenth-century Swedish ecclesiastical courts took a rather consistent view on such promises. In order for marriage promises to be valid and enforceable after consummation had taken place, the couple had had either to follow the guidelines of the betrothal laid down in secular law or alternatively the procedure of a lawful trothplight as described in the 1571 Church Ordinance. Thus, rejecting the formalities of betrothal or formal trothplight before intercourse meant taking a risk that often did not pay. For example, the Stockholm chapter seems to have been rather fastidious in insisting on the formalities laid down by the 1571 Church Ordinance. Unless the woman could prove ‘the essential factors’ of marriage (*essentialia coniugij*): the presence of respectable third parties as witnesses, parents only were usually not enough, and the giving of gifts, at least by the man to the woman, the union was denounced as apparent fornication or whoredom. The court might also similarly conclude in more learned terms: ‘*Non fuit Essentialia requisita coniugij, sed scortatio*’, and read to the couple a text from Paul’s Epistles for good measure. In addition, the couple might be sentenced to perform public penance for their crime.³⁷³

Although betrothed couples had considerable freedom in their courtship, and premarital intercourse was common even among land-owning peasantry, at least in the late seventeenth century they usually solemnized their union before a child was born.³⁷⁴ The Church tried to encourage marriage as a remedy of the moral offence of fornication. The forty-mark fine for the violation of a virgin (*mökränkning*) was reduced to half if the man was prepared to marry the girl, while the twenty-mark fine

³⁷³ E.g. SStA, SDP, 7.7.1596, 39–40; SStA, SDP, 28.3.1598, 121; SStA, SDP, 26.4.1598, 122; SStA, SDP, 26.4.1598, 123–124; SStA, SDP, 1.12.1599, 157.

³⁷⁴ Gaunt, “Illegitimacy,” 323. See also Johansen, “Marriage or Money,” 28.

(if the girl was illegitimate) was dropped altogether.³⁷⁵ The 1442 law, in which the section appeared, was slow in replacing Magnus Eriksson's Law of the Realm, but in the second half of the sixteenth century, the court records show that this was becoming the standard practice. The important thing was whether the couple was betrothed or not at the time of the intercourse: this determined whether the offence was treated as prenuptial fornication or violation of a virgin, followed by subsequent betrothal. For example in 1554 Olof Månsson was fined twenty marks for sleeping with his 'betrothed bride' before the betrothal had taken place.³⁷⁶

The three-mark fine for prenuptial fornication, first mentioned in Sweden in the fifteenth century by the Church and included in the secular 1442 law, may have been unpopular because couples acting in accordance with secular law and custom were nevertheless fined for anticipating the wedding. Therefore, prenuptial fornication was decriminalized for a certain period after the Reformation. The Swedish Reformers found that it could be no crime since, if, according to the Church, a marriage was made by consent and subsequent consummation, the consummation perfecting the marriage. According to this reasoning, sexual union was under these circumstances no more sinful than other conjugal intercourse. The Ordinance of Västerås of 1527 abolished the fine for prenuptial fornication for precisely this reason.³⁷⁷ In his commentary on the Ordinance from 1533, Archbishop Laurentius Petri confirmed: 'Because between a legally betrothed (*Laghfesto qwinno*) man and woman there exists true marriage even if they were never married in church'.³⁷⁸ The custom was the more irritating because it seems to have been very common for betrothed or engaged couples to commence sexual relations or even to start to cohabit before the wedding or ecclesiastical solemnization. In fact, many couples omitted the wedding altogether or postponed it for many years. Indeed, such views received some justification from Luther, who did not consider intercourse in anticipation of a betrothal as 'whoredom' because, unlike fornication, it took 'place in the name and with the intention of marriage'.³⁷⁹

³⁷⁵ *KrL*, G 3:1, 44; e.g. 23.5.1556, *EST*, 83; *Saköresbok för Medelpad 1541–1609*, 87, 123. For French late-medieval church courts, see Gottlieb, "The Meaning of Clandestine Marriage," 57–58.

³⁷⁶ E.g. *Saköresbok för Medelpad 1541–1609*, 51. See also *ibid.*, 104.

³⁷⁷ Ordinance of Västerås, *SRA I*, 92.

³⁷⁸ *HSRH*, 95.

³⁷⁹ Martin Luther, "On Marriage Matters" [1530], 293.

Nevertheless, this counter-reactionary notion did not last very long, as by the end of the century the ecclesiastical authorities were again fining couples anticipating the Church's blessing of their marital union. The Church Ordinance of 1571 insisted that sexual union after the trothplight but before solemnization was forbidden and restored the fine for prenuptial fornication.³⁸⁰ The criminalization was accompanied by prohibitions on the cohabitation of the betrothed couple before solemnization.³⁸¹ In the fine records of Medelpad, the first fine for prenuptial fornication appeared in 1573 when Erik Persson and Per Clavusson were fined three marks for having sex with their brides before solemnization or wedding. The offence was also called fornication during betrothal (*lönskaleger i fästom*).³⁸² This fine seems to have been linked to ecclesiastical penalties. In 1597 Lasse Tönnesson, a young soldier (*hoffman*) had trothplighted the widow Karin in the presence of good men and slept with her. Then Lasse's unit had accompanied Duke Karl to Finland and by the time he had returned, Karin had given birth to their child. The couple was allowed to 'complete their marriage' with solemnization, but for his prenuptial fornication Lasse had to give the hospital one mark.³⁸³

This policy corresponded largely with that of other Protestant regions: couples who had had sex after exchanging private vows or between betrothal and solemnization were fined and imprisoned or banished by the secular courts and excommunicated by the Church.³⁸⁴ In Calvinist Geneva, for example, engaged couples guilty of fornication were punished with a three-day imprisonment on bread and water, and in Scotland such couples were fined and had to perform public penance. The offenders themselves occasionally protested that intercourse under promise of marriage was not an act of fornication.³⁸⁵ In Denmark couples found guilty of prenuptial fornication were to perform public penance.³⁸⁶ In England the fines for antenuptial fornication were rela-

³⁸⁰ Ordning om echtskapet, *KO 1571*, 122; Om echtskap, art. 12, *Biskop J. Rudbeckius' kyrko-stadgar*, 19.

³⁸¹ Synod of Strängnäs 1584, *SSA II*, 4; Synod of Strängnäs 1584, *ibid.*, 13.

³⁸² *Saköresbok för Medelpad 1541–1609*, 135–136, 156, 165–166, 169.

³⁸³ ULA, UDP, 18.1.1598, 134v.

³⁸⁴ Ozment, *When Fathers Ruled*, 36; Witte, *Law and Protestantism*, 239–240. See also Ingram, *Church Courts*, 219–226.

³⁸⁵ Graham, *The Uses of Reform*, 27, 111, 123–124, 281–282; Leneman – Michison, *Sin in the City*, 20, 64; Michison – Leneman, *Girls in Trouble*, 83–84.

³⁸⁶ Nelleman, "Retshistoriske Bemærkninger," 391.

tively high for the average poor person and in addition, the couple could expect either private or public penance, depending on local practice.³⁸⁷ In Sweden, however, the size of the prenuptial fornication fines was relatively small and corresponded to that of a slap causing a bruise or regular fornication. The situation remained so because of the failure of King Charles IX's law reform project. Namely, the proposed bill would have graded the fines for prenuptial fornication so that a nobleman would have paid a fine between a hundred and four hundred marks, depending on his status, for sleeping with his bride before solemnization. A peasant would have paid a forty-mark fine and a non-landowning man was expected to pay twenty marks. A woman who fornicated either before or after her engagement risked losing her parental inheritance.³⁸⁸ The bill of Rosengren's law commission, on the other hand, represented a completely opposite view that probably corresponded better to popular perceptions. If the trothplighted couple had intercourse, they were to pay no fine if they married, but if the groom deserted his fiancée after the initiated sexual relation, he was to be sentenced for adultery and fined accordingly.³⁸⁹

The ecclesiastical courts also viewed the hasty trothplights of widows and widowers with suspicion. The recommended *tempus luctus* or mourning period between the demise of one's spouse and remarriage was from six months to a year.³⁹⁰ For example, the chapter of Västerås interviewed Erik Nilsson of Skultuna, whose wife had been buried on March 12, but who had trothplighted another woman two weeks later and taken this new wife into his house on April 6.³⁹¹ The behaviour of Nils Persson of Enånger was even more suspicious. He had trothplighted a widow eight days after his wife had died of childbirth, around the feast of St. Thomas (21 December), and on the fourth day of Christmas she moved in at his farm and they had intercourse.³⁹² The speed for tying a new bond was sometimes due to necessity in running the household or minding the children. However, occasionally the priests' suspicions proved to be well founded: the married party, usually the

³⁸⁷ Ingram, *Church Courts*, 236.

³⁸⁸ G 2, Carl den Niondes lagförslag, *Lagförslag i Carl den Niondes tid*, 118–119. Nevertheless, the child born to the betrothed couple was considered legitimate, *ibid.*, 120.

³⁸⁹ G 2, Det Rosengrenska lagförslaget, *Lagförslag i Carl den Niondes tid*, 304.

³⁹⁰ Knuutila, *Aviohitto*, 202–203. See also Wendel, *Le mariage*, 144.

³⁹¹ VDA, VDP, A I:1, 9.4.1595, 3v.

³⁹² ULA, UDP, 14.2.1594, 43v; ULA, UDP, 14.2.1594, 57v. For German attitudes, see Harrington, *Reordering marriage*, 42.

husband, had been pursuing an affair with another woman (typically the maid) while his wife was still alive.³⁹³

Delayed Marriages, Sexual Criminality and Wedding Costs

The Swedish marriage process, as discussed above, could take considerable time to complete. For many people this was not necessarily undesirable, but for the Church, the vague and often extended period between betrothal and wedding was clearly perceived as a problem. In many countries, couples courting seriously were given more freedom and a marriage promise was more or less licence to sexual intercourse,³⁹⁴ and Sweden was by no means exceptional here. The Church frowned on couples joined together in long informal betrothals for years on end and yet refusing to take steps towards solemnization. Already the statute of Stockholm of 1560 had insisted that priests should not perform betrothals unless they extracted from the couple a promise of solemnization at an appointed time. Likewise, in his suggestion for a Church Ordinance (1560), Archbishop Laurentius Petri had suggested that the priest should not betroth any couples that had not previously set with him a date for the wedding.³⁹⁵ In the diocese of Strängnäs, for example, betrothals were to be allowed only if the wedding followed immediately. The couple was forbidden to move in together before ecclesiastical solemnization.³⁹⁶ This seems to have been a relatively common occurrence after betrothals or trothplights as farms often needed the labour.³⁹⁷ Mikael Agricola attacked vehemently ‘those mad fools’, who got engaged clandestinely, lived together for even five or six years giving birth to ‘bastards’. Then the Devil caused them to fall out with one another and they wanted to be divorced.³⁹⁸

Moreover, despite the formality of the secular betrothal, the parish priest was not necessarily aware of the promise nor was he able to verify that there were no impediments that would prevent the union.

³⁹³ E.g. UDP, ULA, 11.5.1598, 139v; Flisby sochen, VAA, 161. See also Elliott, “Single women,” 87–89.

³⁹⁴ E.g. Ingram, *Church Courts*, 225–230.

³⁹⁵ Articles of Stockholm 1560, Stiernman 1728–1743, Bihang, 189; Söderlind, “Troloffning,” 60; Hellsten, *Kyrklig och radikal*, 82. See also Articles of Örebro 1586, Stiernman 1728–1743, I, 326.

³⁹⁶ Synod of Strängnäs 1583, *SSA II*, 4; Synod of Uppsala 1678, *SSA I*, 150.

³⁹⁷ See also *CEAP*, 303; Telste, “Samliv,” 151–153.

³⁹⁸ Mikael Agricola, “Käsikiria Castesta ia muista Christikunnan Menoista” [1549], 15–16.

Long betrothals could be a nuisance as they kept people pending in a somewhat liminal state for years on end. There was no marriage but yet the couple, having obligations towards each other, could not freely marry elsewhere. The delaying party could be playing for time, hoping that the other would call the marriage plans off. Sometimes either party had been pressured into the betrothal and these stalling tactics were preferable to a direct confrontation. The party wishing to proceed with the wedding could sue the stalling party at the ecclesiastical court to put pressure on the other and finally have the matter solved one way or another.

The delay in marriage created a real risk for either to commit fornication, in which case the crime was treated as adultery because of the betrothal.³⁹⁹ This fear of sexual lapse was one of the reasons why the Church wished the marriage process to come to an end through the wedding and solemnization. The delay was occasionally caused by prevarications of one party. Johan of Starbäck had abandoned his bride since he had spoken several times to her father about the wedding but the man kept delaying and rejecting the suggested dates. His bride's father was indeed perceived as the main cause for the problems of the proposed marriage.⁴⁰⁰ In a case from 1596 Hans Persson, a Gävle burgher, wanted to abandon his bride Göligh, who in his absence had fornicated with a fellow servant in the house they both served. Informed of the circumstances by the local priest, the chapter sourly noted that Hans himself was the reason of her fall because he had 'kept her bound' for nine years and had time and time again deferred the wedding, although her kin kept exhorting him to set a date. His mother might have been against the union. Because of these circumstances the chapter pressured him to forgive her, which he did and the couple promised to arrange a wedding before the feast of St. Andrew.⁴⁰¹ In another case the trothplight had lasted for eight years and the girl's father had in vain prepared for the wedding twice.⁴⁰² Admittedly, these

³⁹⁹ E.g. "Answers to Regimentrådet 1540–1542," 195; *Saköresbok för Medelpad 1541–1609*, 124, 174. See also Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 17.

⁴⁰⁰ Arby sochen, *VA4*, 8. See also Moratorpa sochen, *VA4*, 9–10.

⁴⁰¹ ULA, UDP, 23.9.1596, 127.

⁴⁰² Barnarp och Månszarp sochner, *VA4*, 113–114.

were exceptionally long engagements but, nevertheless, there are several mentions of betrothals lasting three or five years and more.⁴⁰³

The 1584 synod of Strängnäs insisted on a three-mark yearly fine for lawfully betrothed couples, who delayed solemnization for more than two years, while the Articles of Örebro (1586) insisted that the couple solemnize soon after the trothplight within a certain prescribed period.⁴⁰⁴ Some statute or an individual zealous rural dean may have influenced the pattern of Medelpad. Namely, after 1573 couples were fined three marks for ‘excessively long betrothals’ (*longsamligh fästning*) in Medelpad. That year eleven men were fined for the offence at the local secular assizes. This may have been an individual outburst of local control in connection with a visitation or another event, but records show that similar offences were occasionally punished with a fine.⁴⁰⁵

Nevertheless, the problem was how to define a suitable period between betrothal and marriage. This was a clearly a matter of taste. Synodal statutes tried to provide the couples with precise time limits between the betrothal and wedding. For example, the 1619 statutes of the diocese of Växjö specified that three months was the maximum period between betrothal and wedding.⁴⁰⁶ In case of an ecclesiastical betrothal, it was easier for the priest to verify the existence of the initiated bond. When Vicar Jöns of Söderby heard that his parishioner, Matts Persson, was thinking of abandoning his bride, Marie Nilsdotter, whom he had betrothed in church, he denied Matts the sacrament. However, when Matts and six other peasants swore that he would fulfil his promise, he was allowed to partake of the body of Christ. As Matts now refused to marry Marie, he was refused both sacrament and entry to church. It was considered particularly wicked of him to mendaciously induce six men to swear with him so that he could partake of the sacrament.⁴⁰⁷

Custom also required that masters, having consented to the marriage itself and possibly even through their own good offices, arranged the

⁴⁰³ E.g. ULA, UDP, 7.10.1596, 128; ULA, UDP, 7.8.1595, 82; 9.3.1586, *Upplands lagmansdombok 1581 och 1586*, 178–179.

⁴⁰⁴ Synod of Strängnäs 1584, *SSA II*, 10; Articles of Örebro 1586, Stiernman 1728–1743, I, 362. See also Kihlaamisen tapa (1652~1657, Manual for Engagements) in Perälä, *Eskil Petraeus*, 275.

⁴⁰⁵ *Saköresbok för Medelpad 1541–1609*, 135–141. See also *ibid.*, 181.

⁴⁰⁶ Kyrko-ordning för Vexjö Stift 1619, *ES VIII*, 598. See also Witte, “Zwischen Sakrament und Vertrag,” 406.

⁴⁰⁷ ULA, UDP, 21.2.1598, 171v.

weddings of their menials, domestic servants and dependents either out of sheer generosity or lent them money, for instance, against their future service. As Schering Rosenhane wrote in the seventeenth century, when a servant, farmhand or maidservant had served long the master had willingly to allow him or her some benefits or assistance (*befodring*), for example for 'honest marriage or wedding'. This was one of the features of traditional patriarchal master-servant relations.⁴⁰⁸ There is even medieval Swedish evidence of the practice.⁴⁰⁹ This duty naturally especially fell to nobility and magnates. Erik Fleming and Hebla Sparre offered to arrange the wedding of Fleming's bailiff, Erik Håkansson, in connection with the christening of their infant or the churching of Hebla Sparre after Christmas 1541.⁴¹⁰ When Sigrid Sture and Ture Bielke arranged the wedding of the wet-nurse who had nursed three of their children, they also invited Sigrid's mother, Countess Märta Leijonhufvud, and sister, Baroness Malin Sture, to attend. Similarly, Duke Karl of Södermanland was willing to organize the wedding of his cook and Princess Anna's chambermaid.⁴¹¹ For masters and mistresses the act of generosity towards their servants was an expected part of good mastership or lordship. Also it was a means of demonstrating their own status, wealth and magnanimity.

If such benefactors could not be discovered, in some cases the wedding had simply to be delayed until necessary funds could be obtained. In addition, there was no simple solution for delays in finishing the marriage process, as matrimony was often related to economic independence. For many men a suitable marriage age was tantamount to the capacity to support a wife and family should children, God willing, be born of the union. Landowning peasants often delayed marriage until they could gain a holding of their own: either marrying into or succeeding to a farm. Artisans had to learn a trade, and marrying was normally difficult, though not impossible during apprenticeship.⁴¹²

⁴⁰⁸ Schering Rosenhane's *Oeconomia*, 11. See also Ozment, *Magdalena and Balthasar*, 113.

⁴⁰⁹ E.g. Salonen, "When Matrimony Turned into a Funeral"; *Den helige biskop Brynolf af Skara levnad*, 79–80.

⁴¹⁰ *BFH III*, 127–128; Lahtinen, *Söpeutwat*, 180.

⁴¹¹ *Malin Stures borttröfande*, 29; RA, Hertig Karls registratur, vol. 23 1596, 4.9.1596.

⁴¹² On problems related to apprenticeship and marriage see Lennartsson, *I säng och säte*, 179–180; Elliott, "Single women," 96; Pedersen, *Marriage Disputes*, 107; Introduction in *Love & Marriage*, 17.



8. *De Maiatibus festis* by Olaus Magnus Gothus. Roma, 1555. Young people of both sexes could interact freely in Swedish society both in everyday life and on feast days. The sexes were not segregated on social occasions. The pragmatic attitude had its expression in the fact that loss of virginity was hardly any great dishonour for non-noble girls. Moreover, prenuptial pregnancy was no exceptional occurrence among the peasantry.

In other studies, the possibility to establish one's own household correlated with illegitimacy rates. In areas where social stratification was more pronounced, most of the illegitimate births were recorded for daughters of small farms or non-landowning families. People usually admitted the fornication even when pregnancy did not follow, partly because liaisons were difficult to hide in the small communities, partly because swift punishment was preferred to remaining excommunicate outside the parish and the community. For the woman, a sentence for fornication did not necessarily mean a catastrophe precluding future marriage. In the later seventeenth century, growing social stratification and generally weakening marriage opportunities, however, branded the fornicator more effectively. The number of claims of promised marriage increased considerably, and even in the unusual cases where the women could prove their claim, no marriage was contracted.⁴¹³ That the marriage market favoured men was partly due to a surplus of women caused by the intermittent wars of the seventeenth century.

Pragmatic Attitudes of Secular Society toward Sexual Crime and Marriage

In practice sexual conduct was more permissive than the ideal. The commencement of sexual relations after betrothal seems to have been commonplace in sixteenth-century Sweden. In a case from Stockholm Brita, the maidservant of the governor of Stockholm, and a smith had pledged their troth. The smith gave her two rings and a chest as pledges. When the couple retired that night, Brita went to sleep with the smith.⁴¹⁴ In peasant circles, brides' parents seem not to have demonstrated any concerns about the betrothed couple's sharing the same bed. When Olof Andersson was visiting his bride and her parents, he stayed the night there because it was too late for him to go home. When he went to bed, she followed him, as a matter of course, it seems.⁴¹⁵ It was rather the exception that an engaged couple did not sleep together. One maid complained to the Uppsala chapter about a young man who had promised to marry her. As he had not managed to have his way with her, he had changed his mind, started courting elsewhere and slandered her violently so that she was forced to quit service despite the hard times. In fact, chapter records sometimes mentioned expressly that

⁴¹³ Pylkkänen, *Puoli vuodetta*, 207–209, 230–239, 365–368.

⁴¹⁴ 16.7.1610, *SST från år 1592 VII*, 88–90.

⁴¹⁵ 21.1.1602, *SHD 1601–1651*, 17.

a betrothal was dissoluble because the couple had not had intercourse. When Karin Thomasdotter wished to contract with another after her fiancé had left her, taken his gifts again and refused to come to court despite several citations, the chapter noted that they had not had sexual relations, '[r]es tamen est integra inter illos', and granted her permission to marry another.⁴¹⁶ As in many other regions, 'an agreement to marry meant freedom to copulate' although the frustration of the marriage plans could mean that the woman risked dishonour because of loss of her virginity or the birth of illegitimate children.⁴¹⁷

The logic of the medieval and sixteenth-century popular attitude towards fornication and adultery revolved around marriage. All such relationships that did not threaten the existing or future marriage planned by the family according to their social background were acceptable. Yet female honour, tied to sexuality, could be jeopardized by a sexual relationship resulting in the birth of a child. The man, her lover, had to know that he was the child's father before he was duty-bound to restore her honour by marriage and take responsibility for the child. If marriage was impossible or the relationship was not on solid ground, he was publicly to compensate the woman and pay his share of the child's upkeep. This proved that the woman had behaved honourably and was still marriageable. If, for example, the man was so poor that he could not establish a household of his own, he did not marry the woman, but instead paid some modest compensation. If a the man refused both marriage and compensation to a woman who slept around, so that there was no certainty of the paternity of the child, she would lose her honour and reputation, even that of her family, and her possibilities to marry honourably. Unmarried women were to behave as faithfully as married women, sex only with one man. If the relationship was broken even after the birth of an illegitimate child, but her honour was intact, she could still find another man and remarry almost like a widow. The sexual relationships of men did usually not threaten their own marriage or that of others. Nor was their honour connected to their sexuality as such: it was rather connected to the responsibility they took for the woman and child. As long as the families controlled

⁴¹⁶ ULA, UDP, 7.10.1596, 128; ULA, UDP, 2.4.1600, 173. See also 7.6.1604, *Östra härad's dombok 1602–1605*, 80, 6.11.1604, *ibid.*, 91, 8.11.1604, *ibid.*, 100. Cf. VDA, VDP A I:1, 82.

⁴¹⁷ Twinam, *Public Lives*, 36–37. See also Laslett, *The World we have lost*, 141–143.

the system, it functioned, because the dishonourable actions of people also involved their families in possible disgrace.⁴¹⁸

Jon Larsson had violated a maiden, Marie Knutsdotter, and begot a child with her. Now her relatives insisted that he wed her, and the woman claimed he had promised her to do so several times. His relatives were agreeable to this, and the archbishop and his chapter exhorted him to follow the advice of good men. It seems that Jon was reluctant to do this because of the poverty of both. However, later that day the records of the chapter mention that Jon trothplighted Marie voluntarily in the presence of two men '[c]um consensu et voluntate Domini Archiepiscopi et Capitularium'.⁴¹⁹ Nevertheless, these traditional moralities were becoming strained with the increasing social stratification and proletarianization in Swedish society, first in towns, then in the countryside. The erosion of ecclesiastical discipline and Orthodox Lutheran moral attitudes contributed to this development.⁴²⁰

In rural communities the marriage of the fornicators was usually the preferred solution for several reasons. Financial considerations prompted this as marriage automatically legitimized the child. Marriage also re-established the lost honour of all parties even if a respectable man was supposed to shoulder the responsibility for his actions, compensate the woman for her lost virginity, and provide for the child. Social control had considerable significance in a relatively immobile and egalitarian landowning community in ensuring that courting couples actually married if pregnancy occurred. The coercive powers depended, as has been observed, on the community rather than on the law.⁴²¹ In some cases the alleged seducer came to the house in which the girl was in labour and was pressured by the attending women or moved by her agonies to promise marriage to her.⁴²² Unlike Germany, where deflowered maidens seem to have tended to remain spinsters, loss of virginity in

⁴¹⁸ Aalto, *Kirkko ja kruunu*, 101–102, 188–191. See also Johansen, "Marriage or Money," 28.

⁴¹⁹ ULA, UDP, 6.8.1595, 81v.

⁴²⁰ Sundin, *För Gud*, 334–335.

⁴²¹ Källemark, "Illegitimacy," 334; Johansen, "Marriage or Money," 28; Gillis, *For Better, For Worse*, 120, 126–127. In practice, marriage was best achieved when the sexual partners were social equals, Pohjola-Vilkuna, *Eros kylässä*, 49. See also Smout, "Aspects," 210–215; Hacke, *Women, Sex and Marriage*, 54–64; Segalen, *Love and Power*, 23–24.

⁴²² E.g. ULA, UDP, 28.10.1596, 130.

Sweden does not seem to have made a maiden unmarriageable even if she might be forced to marry slightly under her estate.⁴²³

In cases of fornication or violation of a virgin, the law was more lenient for those couples caught in the courting process, as the fines would be reduced to half if the man was prepared to marry the girl whose maidenhood he had taken.⁴²⁴ On a similar note, the town elders of Vadstena resolved that because of his poverty, Mårten Kaat was to pay only eight marks (divided into two parts) for violating Elin Nilsson, but also because they had been since trothplighted and he intended to marry her.⁴²⁵ This depended, however, on the man's willingness to tie the knot. If the woman claimed marriage, which the man denied, and there were no witnesses, the court would not comment on the alleged promise of marriage. Rather, it fined the man for the sexual crime committed and left the woman to pursue the matter as a marriage contract dispute at the ecclesiastical court.⁴²⁶

Occasionally, when the court reduced the fine because of the man's willingness to marry his lover, it also sought to ensure that he was as good as his word. When Bengt the Stockmaker⁴²⁷ announced to the town court of Vadstena that he had taken Törsten Håkansson in bed *in flagrante* with Anders the Saddlemaker's (*salmaker*) daughter, the court ordered that Törsten was to betroth her within a fortnight and to pay a ten-mark fine for the violation. The couple had had sexual relations since Christmas and as her father was acting as Törsten's surety, one may presume that he also wished the union to take place.⁴²⁸ The local community could also express its disapproval of a man's behaviour by condemning him for violating widow instead of mere fornication. For example, when footsoldier Jöns Larsson returned home after four years spent in war against Russia, he wished to get rid of his fiancée, widow Sigrid Siulsdotter, with whom he had fornicated and afterwards trothplighted in the presence of the priest and other persons. The question of the trothplight was referred to the archbishop, who obviously dissolved it, but Jöns had to answer for the crime in secular court.

⁴²³ Ozment, *When Fathers Ruled*, 34. See also Martin Luther, "On Marriage Matters" [1530], 280.

⁴²⁴ *KrL*, G 3:1, 44.

⁴²⁵ 10.12.1604, *VST*, 364.

⁴²⁶ 29.8.1597, *VST*, 245. See also Hansen, *Ordnade hushåll*, 216–223.

⁴²⁷ *Stockmaker* here signifies a maker of rifle stocks.

⁴²⁸ 25.6.1578, *VST*, 13.

As Sigrid was considered an 'honest (*oberychlad*) widow', Jöns was sentenced for the usual forty-mark fine for violating a virgin.⁴²⁹

Violators of virgins were not the only ones thus targeted: men that had for some time been living in concubinage or having a longer relationship could face the choice between matrimony or a fine. Already the medieval Swedish Church had pressured men who kept concubines either to marry them or renounce them.⁴³⁰ This policy could also be pursued by secular officials. The town elders of Vadstena pressurized Håkan the Beltmaker either to marry or renounce what seems to have been his concubine: he was fined three marks for fornication, but if he neither sent away his mistress nor married her within fourteen days, the fine was doubled.⁴³¹ Women, however, were not seen merely as victims of lascivious men. When Anna, widow of Gillis *kardewanbereder*⁴³² complained that Erik Biörnsson, a town servant (*kemner*), had without cause arrested his daughter, he defended himself by explaining that Anna's daughter had long been living in fornication with Peter Steffens. When he had addressed her by virtue of his office, she had replied to him obstinately and impudently. Anna claimed that Peter had promised to marry his daughter, but the court was unimpressed: the couple had better get married right away.⁴³³

The secular court could also go further. When Christiern Mattsson had impregnated a 'slut' eighteen months previously, he had been pardoned his offence on condition that if he had further relations with her, he would be fined forty marks. As he had again sired a child with her, this fine was exacted. However, on account of the 'request of good men', he only had to pay five *dalers*. In addition he had to commit himself further: if he had sexual relations with her again, he was to pay forty *dalers* and without further wavering or ado marry her in church.⁴³⁴ Similarly Hindrick the Goldsmith was accused of breaking his obligation never again to be with his concubine in bed and board: he had taken her back, then driven her out and once more taken her

⁴²⁹ *Tingsprotokoll för Njurunda*, 25, 30, 35.

⁴³⁰ See above Chapter 3.1.

⁴³¹ 23.7.1580, *VST*, 51. See also 10.1.1589, *Nya Lödöse tänkeböcker*, 111 and 7.3.1589, *Nya Lödöse tänkeböcker*, 129; 9.6.1619, *Nya Lödöse tänkeböcker*, 528; 2.8.1619, *Nya Lödöse tänkeböcker*, 533. See also 15.10.1593, *VST*, 181.

⁴³² *Kardewan* or *karduan* is fine leather originally named after Corboba in Spain, and so Anna was a tanner's widow.

⁴³³ 17.9.1593, *SST från år 1592 I*, 155.

⁴³⁴ 10.10.1608, *VST*, 419.

back. He explained that he had thrown her out because she had once entered through the window in the night at Christmas and stolen a platter of steak and some fine clothes. Hindrick claimed that he simply did not want to desert her even if she were sentenced for this larceny. The court decided instead that the couple would be married—as they themselves wished.⁴³⁵ In addition, a woman could use the secular court not in order to receive compensation, but rather to put pressure on the man and inform the community of certain facts.⁴³⁶

Thus, the attitudes of the peasantry and ordinary people were pragmatic above all. Couples caught in the courting process could be nudged towards the altar and leniency displayed, but disturbers of the peace, whether loose women or serial seducers, might expect harsher penalties.⁴³⁷ Consequently, one should not overexaggerate the rigidity of the Church or the pragmatism of the peasantry. Just like the Church attempted to have already married couples solemnize their indissoluble unions, visitation and church court records indicate that the Church also tried to persuade fornicating couples to marry. If the parties could be convinced to marry, they could be married forthwith during the visitation or alternatively they were to find sureties and pledge themselves to solemnize before or at a certain date. The visitation records of Archbishop Abraham Angermannus listed the loose women or sluts of the town of Linköping containing more than twenty names, but at the end of the list there is a note that eleven women were let off and escaped ecclesiastical penalty as some had received certain promises of marriage and others less certain. Nevertheless, any relapse would be a whipping offence.⁴³⁸

The Church and communities shared the same basic goal, persuading fornicators to marry if possible, and alternatively be reconciled with each other and the community. Where no ethical or dogmatic issue was jeopardized, the Church had no objections to blessing unions that had not commenced as they ideally ought to have begun. Ingrid Bengtsson had lapsed into fornication for the third time, this time with Mårten Eriksson, who had also promised to legitimate his child and

⁴³⁵ 30.4.1604, *VST*, 346–347.

⁴³⁶ E.g. 26.2.1593, *Nya Lödöse tänkeböcker*, 287.

⁴³⁷ E.g. ULA, Örebro rådhusrätt och magistrat, A 1 I:1 Domböcker 1590–1603, 21.10.1595, 18.3.1600, 20.4.1600, 2.8.1602, 23.8.1602, 30.8.1602, 18v, 42–42v, 47–47v.

⁴³⁸ Linköpingz stadh, *V4A*, 160. See also, e.g. Egbyborna sochen, *V4A*, 121; Ringarum sochen, *V4A*, 168; Sörköping stadh, *V4A*, 182.

wed her. Mårten could not present any written proof that her former fiancé Henrik Eriksson refused to ever marry her, but three witnesses testified to hearing that Henrik had declared in Turku that he would 'never and by no means' marry her. The chapter insisted that Ingrid be churchd publicly, but allowed the marriage on condition that it take place immediately and without prevarication.⁴³⁹

Regularly, the local priest was the first to endeavour to persuade the fornicators to marry each other. About 1626 the chapter of Turku complained that Hans Andersson, the former scribe of the castle, had had three illegitimate children, but still he refused to be forced 'by bad or good' to solemnize his union.⁴⁴⁰ The chapters even tried to persuade fornicators to marry just like they tried to reconcile betrothed couples requesting for a dissolution. For example, Olof Storm was persuaded to marry Marit, whose virginity he had taken, and 'keep her as his legitimate wife'.⁴⁴¹

If reconciliation failed, marriage to another was also acceptable. For example, Olof Staffansson wanted to break off his betrothal with his bride, whom he had not had sex with. He was allowed to marry when he pleased. The bride, however, had twice had intercourse with another man after the betrothal and they wanted to marry each other. This the chapter permitted provided they pay the fine of one barrel of corn each and perform penance before being publicly absolved by the rural dean.⁴⁴² Nils Andersson and his maidservant had had intercourse, but she was trothplighted to a man, who had deserted her two and a half years earlier. The solemnization of Nils and his maid took place immediately, notwithstanding her previous trothplight, but for their intercourse Nils paid one *daler* to the cathedral of Linköping.⁴⁴³ Similarly, when one spouse had had cause to get a divorce, for example, because of the other's adultery or malicious abandonment, and s/he had contracted (or fornicated) with another without first obtaining a divorce, the second marriage was regularly allowed or considered valid by the Church. Mårten Tysk, for instance, had had intercourse with Ragnell and wished to marry her. Mårten, however, was still nominally married although his wife had committed adultery and abandoned him. The

⁴³⁹ UDP, ULA, 21.11.1599, 165v; UDP, ULA, 12.12.1599, 166v.

⁴⁴⁰ *Handlingar rörande finska kyrkan och presterskapet*, 484.

⁴⁴¹ VDA, VDP A I:1, 28.1.1597, 28v.

⁴⁴² ULA, UDP, 15.5.1594, 19v.

⁴⁴³ Gräsgård sochen, *VAA*, 27.

wedlock of Mårten and Ragnell was confirmed, and its solemnization was to be held when Mårten returned from Danzig.⁴⁴⁴

The Church, however, did not pursue this policy of making marriages at all cost. Petitions of marriage with a person one had pursued an affair with during one's previous marriage, despite the possible impediment of crime, were not always successful. Moreover, if an impediment of affinity or consanguinity was discovered between the parties of the proposed marriage, the Church, depending on the degree, could refuse to grant a dispensation for the couple although the couple had had intercourse and possibly even children.⁴⁴⁵ Nevertheless, it has been observed of fornication resulting in pregnancy in sixteenth-century Germany that 'secular authorities considered the sexual offense secondary in importance to the abuse of betrothal and consequent dangers to the institution of marriage (as well as the patrimony)' and punished severely, unless preceded by public betrothal.⁴⁴⁶ This does not fit the picture of the late sixteenth-century Swedish society that primarily aimed at restoring relations either through the making of a marriage or reconciliation and compensation between the parties. In order to facilitate matrimony, both secular law and the Church were happy to reduce the penalties for fornication or violation of a virgin. Even individual circumstances could occasionally be taken into account: Anders Persson, a young painter, had promised marriage to and had had intercourse with Ingrid Pedersdotter, an adulteress, not knowing of her previous 'improper' conduct. He had recently learned thereof, and now he requested humbly the chapter of Uppsala to spare her from ecclesiastical discipline. Otherwise, he claimed, for his parents' sake he could not 'complete' the marriage he had promised Ingrid. In order to facilitate Ingrid's marriage, the chapter agreed, especially considering that her former husband, Sander the Scot, had not only been an adulterer and an evil rogue but had also practically abandoned her.⁴⁴⁷

⁴⁴⁴ Löth sochen, *VAA*, 41. See also Locknewij sochen, *VAA*, 63; Romsquilla sochen, *VAA*, 89; Höreda sochen, *VAA*, 98–99; Winnersta sochen, *VAA*, 125; Egbyrinna sochen, *VAA*, 127.

⁴⁴⁵ While the Swedish chapters could be willing under such circumstances to grant dispensations in the fourth degree *lineæ equalis* or *inequalis*, they usually refused to grant dispensations for marriages in the third or second degree, Korpiola "Lutheran Marriage Norms," 163–166.

⁴⁴⁶ Harrington, *Reordering marriage*, 239–240.

⁴⁴⁷ ULA, UDP, 10.11.1596, 131v. See also Glömminge sochen, *VAA*, 33–34; Döderhultt sochen, *VAA*, 59–60; Locknewij sochen, *VAA*, 63; Wistt sochen, *VAA*, 155.



9. *De ritu diei Purificationis diuæ Virginis* by Olaus Magnus Gothus. Roma, 1555. Carrying candles played an important part in the rites of purification after childbirth and marriage. While churching after marriage was a disappearing custom, the rites of purification after childbirth became an important means of distinguishing between legitimacy and illegitimacy in post-Reformation Sweden.

Though relentlessly combatting sin and forcing people to repent as well as submit to ecclesiastical discipline, the clergy was by no means immune to the equally important goals of restoring harmony and promoting matrimony that usually were the primary goals of the communities.⁴⁴⁸

4.7 *'Preserving the Difference': The Church, Children and their Parents*

Christening and Churching as Mechanisms of Control

In 1595 Karin de Herboville of Konungsberga, a noblewoman by birth and widow of the royal secretary Olof Gammal, gave birth to her illegitimate son in secrecy. Although she seems to have had a town house in Stockholm, she went with her maid for the parturition to Norrmalm, a suburb of Stockholm and a separate commune. She had several accomplices in her secret delivery: three married women of Norrmalm witnessed her labour or attended the birth in the house of one of the women. Lady Karin stayed there for two days in order to recover and arranged for a wetnurse for the infant, whom she had instructed to be christened Niklas. One of the women had gone with the child to *her* Simon, chaplain at the Castle of Stockholm and living at Norrmalm, to have him baptized. When the priest inquired after the baby's parents, he was told that its parents were a poor seaman and his young wife. Apparently the news leaked out after the baby's death some months later, when lady Karin failed to pay the women all the expenses, leaving them to cope with some of the costs.⁴⁴⁹

Karin de Herboville's case demonstrates a new phase in the Church's control of the marriage process and sexual crime by placing the focus on the birth of a child, baptism, and churching. Namely, in the late sixteenth century the birth of each child meant that the Church determined its parents' status before certain rites would be performed. Baptism and churching started to be used by the Swedish Lutheran Church as means of accentuating the role of lawful marriage. An illegitimate child was baptized differently from a legitimate child in order to preserve and underline the distinction. Similarly an unmarried mother

⁴⁴⁸ See also Hansen, *Ordnade hushåll*, 221–223.

⁴⁴⁹ 21.7.1595, *SST från år 1592 I*, 329–330.

was to be churched in a different way than the respectable matron.⁴⁵⁰ The birth of an illegitimate child naturally revealed the crime in the first place and sent the couple to the secular court followed by possible ecclesiastical discipline. What was new, however, in this was that the Church paid more attention to the parents' possible commitment to one another. An unmarried woman who had given birth to a child had to prove that she was respectable: i.e. that she and her lover had embarked upon the marriage process and exchanged a marriage promise. In 1600, for example, Brita Persdotter proved with two witnesses that Hans Andersson, with whom she had a child, had promised her marriage and given her a ring. The chapter of Stockholm allowed her to be absolved privately, as there was hope of marriage and she was penitent but insisted on solemnization when he returned.⁴⁵¹

Although children were christened and their mothers churched even by the Catholic Church, the Swedish evidence points to a genuine change in the late sixteenth century in contrast to the Middle Ages. There is no evidence from the medieval Swedish ecclesiastical courts or statutes that the child's status was an issue at baptism. The Swedish fifteenth-century treatise on the sacraments, while discussing baptism, its significance and the proper rites at length in the light of Biblical examples, does not take up the question of the child's status.⁴⁵² Even the Swedish synodal and provincial statutes relating to baptism are silent on the subject. Their focus was rather that children be baptized only once using the proper formula and ritual so that a sacrament was created. The Church also feared that children should die unbaptized through the negligence of their parents.⁴⁵³ These concerns did not disappear after the Reformation.⁴⁵⁴ However, other issues regarding the regulation

⁴⁵⁰ For the Biblical origins and earlier history of the custom, see Lempiäinen, *Lapsensynnyttäjiin*, 9–11.

⁴⁵¹ SStA, SDP A I:1, 9.4.1600, 163.

⁴⁵² *De septem sacramentis*, cap. I, 136–145.

⁴⁵³ The following statutes are among those that discuss baptism at some length but do not mention the status of the child in connection with the rite, *De baptismo*, synodal statutes of Nicolaus Hermann, bishop of Linköping (1374–1391), SS, 61–62; 2, Undated synodal statutes of the diocese of Linköping, SS, 74–75; 8, provincial statutes of Arboga 1412, SS, 107; 27–28, undated *Compendium statutorum*, province of Uppsala, SS, 144–145; *De baptismo*, Statutes of the Council of Skara 1472, SS, 168; 1–5, Undated statutes of the diocese of Skara ca. 1350, SKA, 87; Ordinance of episcopal visitations of Strängnäs 1480, SKA, 96.

⁴⁵⁴ E.g. KO 1571, Om Döpselsen, 50–51; Lempiäinen, *Kastekäytäntö*, 21–29.

of sexuality and marriage surfaced when the baptism of infants was subjected to more efficient control.

There is evidence, however, that in other areas of Catholic Europe steps were taken in the course of the Middle Ages to control the lawfulness of making of marriage and to punish sexual sin by restricting churching. In France, where ecclesiastical discipline is known to have been enforced by *ex officio* criminal prosecution, late medieval synodal statutes considered churching to be a privilege of the honest, legitimately married women. The first statutes from the thirteenth century aimed at prohibiting the churching of clerical concubines, then adulteresses, fornicators and other sexual offenders. The point was not to church sexual sinners until they had been punished for their sexual sin by suspension and excommunication. These proscriptions appeared in fourteenth- and fifteenth-century synodal statutes in northern France. Priests disobeying the ban were to be excommunicated and punished. The practice helped to enhance the role of legitimate wife and honest mother. These women were churched publicly 'at decent and customary hours' to demonstrate marital honour and confirm legitimate birth.⁴⁵⁵ Moreover, certain thirteenth- and fourteenth-century Norwegian and Icelandic ecclesiastical statutes prescribed a half-mark fine for those who churched an adulteress or concubine after childbirth. Moreover, only honest married women were allowed to carry a candle at their churching.⁴⁵⁶

In the sixteenth century the Lutheran Church stressed alike with the Catholic Church that baptism was to be performed in the church; only in urgent cases (*in casu necessitatis*) could an emergency baptism be performed elsewhere.⁴⁵⁷ In post-Reformation Sweden the control of churching and baptism came to be an important means of ferreting out irregular couples and sexual crime. Already Laurentius Petri (in 1551) and Mikael Agricola (in 1549) had exhorted priests to inquire diligently who the child's father was. Petri added, however, that if the godparents gave no satisfactory answer regarding the child's parentage, the priest was not to deny baptism, but rather to perform the rite and try to

⁴⁵⁵ Rieder, "The Implications of Exclusion," 72–76. See also Statuts synodaux de Nicolas Gellent 1262, *Les statuts synodaux II*, 78–79; Statuts synodaux de Nicolas Gellent 1270, *ibid.*, 102–103.

⁴⁵⁶ Gustavsson, *Kyrktagningsleden*, 259; Holtan, *Ekteskap*, 84, 86; Jochens, *Women*, 41.

⁴⁵⁷ Lempiäinen, *Kastekäytäntö*, 38–40.

obtain the answer by other means before the mother's purification.⁴⁵⁸ Namely, the 1571 Church Ordinance prescribed that before baptizing an infant, the priest was to inquire of the godparents who its parents were, if this was not known to him already. This is also what the priest had quite properly done when Karin de Herboville's bastard son was about to be baptized. The manuals of the time (1599, 1614) added the inquiry into the parentage of the child to the beginning of the formula of baptism.⁴⁵⁹ The Articles of Vadstena (1553), on the other hand, were only interested in whether the child had already been baptized at home or not.⁴⁶⁰ The information given at the baptism could even have relevance in determining the paternity of a child.⁴⁶¹

The 1571 Church Ordinance recommended that baptisms be performed on holidays when the congregation was present and the godparents and others could take communion. Sunday was generally favoured.⁴⁶² Precisely because of this preference, the synod of Strängnäs insisted that illegitimate children were not to be baptized on Sundays, so that 'a difference be preserved between evil and good'. The 1595 synod of Uppsala prescribed that illegitimate children were to be baptized on Saturday or on Sunday but after the service. A decade later, legitimate babies were supposed to be christened before and illegitimate babies after the sermon.⁴⁶³ The Scottish clergy took the matter even further: the clergy used the withholding of baptism of an infant as an effective disciplinary means. Even wetnurses would refuse unbaptized babies.⁴⁶⁴

As for the churching of mothers after childbirth, the medieval Swedish church seems to have had little to say on the subject. The treatise *De septem sacramentis* mentioned in connection with baptism that it functioned as an honest custom and a respite period for women from their husbands' inordinate and libidinous sexual needs, but said nothing of

⁴⁵⁸ Lempiäinen, *Kastekäytäntö*, 87–88; Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 5. For England, see Ingram, *Church Courts*, 263.

⁴⁵⁹ *KO 1571*, Ordning med Döpselsen, 52; RA, Acta Ecclesiastica 142, II Döpselsen, Een Hand-bok, 55; Lempiäinen, *Lapsensynnyttäjiä*, 87.

⁴⁶⁰ Articles of Vadstena, *Bidrag till svenska kyrkans historia*, 1.

⁴⁶¹ 6.3.1637 and 4.4.1637, *ÅSD 1637*, 42–43, 77.

⁴⁶² *KO 1571*, Om Döpselsen, 50; Lempiäinen, *Kastekäytäntö*, 51–52.

⁴⁶³ 11, Synod of Strängnäs 1585, *SSA II*, 25; Lempiäinen, *Kastekäytäntö*, 54; De Ceremoniis et Ecclesiae constitutionibus, dioc. of Uppsala 1607–1608, *SSA I*, 18.

⁴⁶⁴ Michison – Leneman, *Girls in Trouble*, 62–63, 67–68, 106; Leneman – Michison, *Sin in the City*, 31.

the way it could be used to identify sexual offenders.⁴⁶⁵ Olaus Magnus praised the custom of churching as pious, noble and sacred. On the fortieth day the mothers went to be purified and waited at the church door holding a candle which they handed over to the priest.⁴⁶⁶ In Reformation Sweden at least, the churches seem to have had a special pew for mothers who were to be churchied.⁴⁶⁷

In general the attitudes of the new Evangelical churches to the churching of women after childbirth varied. In the Reformed churches and some German church ordinances the custom was abolished altogether. In other German areas, England and the Scandinavian countries, the custom continued as before despite criticism, with new justification for the ceremony as thanksgiving rather than purification and that the nature of the churching was voluntary rather than obligatory. The custom of purification after childbirth, however, was deep-seated in Scandinavia, and in practice there was a tendency to stress the compulsory character of the ritual.⁴⁶⁸ In sixteenth-century Sweden, at least the time limit before the churching of the mother was six weeks, during which she was supposed to stay at home without participating in any of the more physically strenuous household chores.⁴⁶⁹

There seems to have been no immediate change after the Reformation. The brief formula for purification after childbirth in the Finnish manual of 1549 by Mikael Agricola did not distinguish between married and unmarried mothers. Neither did the 1571 Church Ordinance distinguish the way in the way the mothers of legitimate and illegitimate children were churchied. It insisted, however, that mothers of adulterine and illegitimate children were only to be churchied after they had promised to mend their ways.⁴⁷⁰ Nor did the manual of 1599 make a distinction according to the mothers' status. The manual of 1614 contained the first official formula for 'sluts when they are taken into church

⁴⁶⁵ *De septem sacramentis*, cap. I, 145.

⁴⁶⁶ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 174–175. See also Gustavsson, *Kyrktagningseden*, 22–23.

⁴⁶⁷ VaLA, LDP, A I a:1, parish meeting 1609, 41.

⁴⁶⁸ Gustavsson, *Kyrktagningseden*, 174–178, 200–204; Lempiäinen, *Lapsensynnyttäjien*, 11–13; Thomas, *Religion*, 42–43, 68–69.

⁴⁶⁹ *KO 1571*, Om barnaqwinnors Kyrkiogång, 65; Lempiäinen, *Lapsensynnyttäjien*, 29; Gustavsson, *Kyrktagningseden*, 22–24.

⁴⁷⁰ Mikael Agricola, "Käsikiria Castesta ia muista Christikunnan Menoista" [1549], 28–29; Om barnaqwinnors Kyrkiogång, *KO 1571*, 64–65.

after childbirth'.⁴⁷¹ The insistence on a promise of repentance and mending one's sinful ways, which in 1571 was made a precondition of churching, was discussed at the synod of Strängnäs in 1585. What was to be done with 'sluts' that had had three or four illegitimate children and did not repent? After the first illegitimate child a woman could be taken to church after a public confession of her sins, and the second time she was to be 'mightily pleaded for' and have several good women and men as pledges. If she relapsed, she was to be excommunicated and 'treated as a heathen' until she married.⁴⁷² An unrepentant mother could therefore expect to be excluded from the normal communal life that revolved around the weekly divine services, the centrepiece of the parish. She was made an outsider, at the same time made visible and invisible by her exclusion.⁴⁷³

One would tend to attribute the increasing practice of segregating the honest and dishonest mothers spatially and temporally from each other to later tendencies in the course of the sixteenth century. It would seem that Archbishop Laurentius Petri had not thought it fit to include such notions of distinction in the 1571 Church Ordinance, much of which was in his own handwriting. By contrast, the 1575 Nova Ordinantia insisted that a distinction was to be made between married women and 'loose women' (*lösquinnor*). The latter were to be churched on weekdays, not on Sundays or other holidays, while married women could be churched whenever it suited them.⁴⁷⁴ In the diocese of Strängnäs in 1585 it was decided that the mothers of illegitimate children were to be churched on some other 'sermon day' besides Sunday, which was obviously reserved for respectable mothers.⁴⁷⁵

The stages of the marriage process were taken into account in the categories of mothers. If she was married to the child's father, her churching was performed with solemnity. Likewise, if a woman was legally trothplighted, she was treated like a married woman, and her

⁴⁷¹ RA, Acta Ecclesiastica 142, Een Hand-bok, 88–89; Gustavsson, *Kyrktagningsseden*, 259–260.

⁴⁷² 2, Synod of Strängnäs 1585, *SSA II*, 24.

⁴⁷³ Rieder, "The Implications of Exclusion," 77; ULA, UDP, 18.2.1596, 108v; ULA, UDP, 9.4.1596, 114v; RA, 71 Svenska prinsars och prinsessors arkiv (microfilm), Letters of Duke Gustav of Sachsen-Lauenburg to the Chapter of Uppsala 15.4.1595 and 27.4.1596; ULA, UDP, 5.5.1596, 116. See also Korpiola, "Kyrkotukt," 69–75. Cf. Lempiäinen, *Lapsensynnyttäjäin*, 94.

⁴⁷⁴ 3, Nova Ordinantia, in *KOF I*, 226.

⁴⁷⁵ 2, Synod of Strängnäs 1585, *SSA II*, 24. See also De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 4, *SSA I*, 19.

churching was identical to hers. Correspondingly, the synods of Västerås in 1595 and 1596 also observed that children born out of a 'formal and lawful trothplight' were fully able to inherit.⁴⁷⁶ As far as churching went, a distinction was drawn between the mother who had only had intercourse after the trothplight and the one who had conceived first and then been engaged. The former were churched on Sundays, like married women, while the latter were churched before the sermon on 'a prayer day' (normally a Friday).⁴⁷⁷ The Church was ready to treat betrothed brides who conceived before solemnization with more leniency '*ob favorem conjugii*' so that they could almost be churched like married women although not in the presence of the whole congregation.⁴⁷⁸

If evidence of the trothplight, betrothal or even a confirmed promise of marriage could not be produced, the woman was to be churched as a mother of an illegitimate child, not as a married wife. In addition, if the child was born in adultery or fornication, the mother could only be churched if she had been sentenced by the secular court and had promised to amend her sinful ways. She was also supposed to have performed any penance that had been imposed on her.⁴⁷⁹ Moreover, she was to stand on three Sundays in front of the church door and be churched after the sermon while the congregation was silent. A prayer concerning the forgiveness of sins could be read on the occasion.⁴⁸⁰ If a couple had committed fornication and no trothplight had been performed, but they intended to marry later on, the woman was churched before the sermon with more gentleness than other fornicators.⁴⁸¹

At the beginning of the seventeenth century special formulas for the churching of fornicators and adulteresses appeared in which they were likened to 'the unfortunate sinner Mary Magdalen', who repented her sins with tears and whom Jesus looked upon with mercy. In other formulas, the wrath of God, caused by the sin of adultery, was dwelt on in more detail. God had ordained matrimony for people so that

⁴⁷⁶ Om barnaqwinnors kyrckiegångh, 4, *Biskop J. Rudbeckius' kyrkio-stadgar*, 11; VDA, VDP A I:1, 1595, 7v; VDA, VDP A I:1, synodal statutes of Västerås 1596, 19v.

⁴⁷⁷ Lempiäinen, *Lapsensnnyttäjien*, 37, 93–95.

⁴⁷⁸ Synod of Uppsala 1649, *SSA I*, 89; *CEAP*, 10, 181; *Church Law of 1686*, 5:2.

⁴⁷⁹ E.g. ULA, UDP A 1:1, 2.4.1600, 162; De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 4, *SSA I*, 19; Korpiola, "Kyrkotukt," 68–75.

⁴⁸⁰ De Ceremoniis et Ecclesiae constitutionibus, diocese of Uppsala 1607–1608, 3, *SSA I*, 18; Om barnaqwinnors kyrckiegångh, 1–3, *Biskop J. Rudbeckius' kyrkio-stadgar*, 10.

⁴⁸¹ Om barnaqwinnors kyrckiegångh, 1–3, *Biskop J. Rudbeckius' kyrkio-stadgar*, 10.

they might multiply without sinful intercourse.⁴⁸² Some synodal statutes, like those of the synod of Kalmar in 1619, also made a distinction regarding the time limit before churching. The mothers of illegitimate children had to wait 12 weeks, i.e. twice the normal time before churching, but then the ritual was performed regardless of whether or not the fornication case had been resolved at the assizes.⁴⁸³ Even other distinctions regarding place and procedure were made between the mothers. The 1575 Nova Ordinantia insisted that the mothers of illegitimate children be churched without candles, which had been customary at churchings since the Middle Ages.⁴⁸⁴ The diocese of Strängnäs took this further: when introducing the mothers of illegitimate children into church, the priest was not allowed to read aloud the same prayer used for 'honest and God-fearing married women', but to modify it. In the 1620s Sylvester Phrygius, superintendent of Gothenburg, following the tradition that the priest led the mother of the legitimate child by the hand into the church using the main entrance of the church. The mothers of illegitimate children were to enter the church by the north entrance, if there was one, and the priest was not to take her by the hand.⁴⁸⁵

In some statutes the place of the churching was also to be different so as to confer honour on the respectable and shame on the dishonourable. The respectable mothers were churched in the main aisle of the church by the pulpit, while the mothers of illegitimate children were to be churched toward the back.⁴⁸⁶ The time of the churching was also relevant: married mothers were to be churched immediately after the confession or epistle, while unmarried mothers had to wait until after the service was over. Alternatively the mothers of illegitimate children were churched after the sermon.⁴⁸⁷ The instructions varied between different dioceses and different times, but the intention was clear and universally shared, the public distinguishing between virtue and vice.

⁴⁸² Lempiäinen, *Lapsensynnyttäjien*, 108–109.

⁴⁸³ Lempiäinen, *Lapsensynnyttäjien*, 31.

⁴⁸⁴ 3, Nova Ordinantia, in *KÖFI*, 226. For medieval churching with candles, see e.g. Statute for the parish clerk (*custos ecclesiae*), *FMU IV*, doc. 3632, 440. See also Gustavsson, *Kyrktagningseden*, 87.

⁴⁸⁵ 2, Synod of Strängnäs 1585, *SSA II*, 24; Lempiäinen, *Lapsensynnyttäjien*, 42. The leading of the mother into the church by the hand was mentioned in RA, *Acta Ecclesiastica* 142, Een Hand-bok, fol. 89.

⁴⁸⁶ Lempiäinen, *Lapsensynnyttäjien*, 44. See also Kjollerström, *Kyrkolagsproblemet*, 36; Gustavsson, *Kyrktagningseden*, 71.

⁴⁸⁷ Lempiäinen, *Lapsensynnyttäjien*, 48.

The Church's policy of inquiring and determining the status of each child and mother at the christening or churching was evidently effective as women were reduced to escaping the control of their home parish. They went to other parishes and there mendaciously tried to get the priest, ignorant of the facts of the case, to perform the required rites although the 1571 Church Ordinance expressly considered such churchings performed by other than the proper parish priests to be invalid. Itinerant priests, military chaplains or priest without office were considered especially difficult to control.⁴⁸⁸ Women could fraudulently obtain the necessary documents. Margreta Tomasdotter, who had had a child by Marcus Sigfridsson and consequently had not been to church for over ten months, had tricked a student into writing her a letter that she was trothplighted. The chapter concluded that this was all a lie and insisted that she be publicly taken into church.⁴⁸⁹

Synodal statutes tried to plug this loophole in the net of control by forbidding priests to baptize babies or to church women, who were not of their parish. A negligent priest would face deposal or a six-*daler* fine.⁴⁹⁰ However, obviously some, like Karin de Herboville, managed to lie and bribe themselves out of trouble. Some priests were either less than fastidious or even corrupt. Allegations of this kind were made of the priest Jochimus Seiglerus of the German parish of Stockholm in 1614. He was accused, among other things, of baptizing adulterine children and churching their mothers for a fee and without consulting the Stockholm chapter.⁴⁹¹ In May 1600 the priest Caspar of Stockholm was accused of misconduct and negligence in his office. One of the claims made against him concerned the illegally performed baptism of a bastard. Caspar defended himself by claiming that he had been told that infant was a foundling.⁴⁹² Such accusations cropped up every now and again, and the suspected cleric would face an investigation in the chapter. Clerics were jealous that priests perform rites only for their own

⁴⁸⁸ *KO 1571*, Om barnaqrinnors Kyrkiogång, 65; Lempiäinen, *Kastekäytäntö*, 56–57. For similar instances in medieval France, see Rieder, “The Implications of Exclusion,” 77.

⁴⁸⁹ SStA, SDP A 1:1, 2.4.1600, 162.

⁴⁹⁰ VDA, VDP A I:1, synodal statutes of Västerås 1596, 19v.

⁴⁹¹ 10.12.1614, *SST från år 1592 VIII*, 53–55. See also 5.9.1632 and 12.9.1632, *ÅSD 1626–1632*, 150–151; Lempiäinen, *Lapsensynnyttäjiän*, 111.

⁴⁹² SStA, SDP A I:1, May 1600, 166–167.

parishioners. The jealousy was largely due to financial considerations, as churching fees formed part of a cleric's livelihood.⁴⁹³

Because of this focus on mothers, it was difficult to avoid this ecclesiastical means of control even in the relative anonymity of Stockholm, the capital of Sweden and by far the most populated town in the country. Consequently, women wishing to be churched as respectable and trothplighted or betrothed women would appear at the chapters with witnesses or other evidence of their status. When Alisa of Uppsala wished to be churched after giving birth, she claimed that Anders Pålsson had trothplighted her. *Magister* Laurentius witnessed on her behalf that Anders had admitted this in his and magister Nicolaus's presence, and therefore her request was granted. Similarly Ester Eriksdotter of Stockholm, who had had a child with the student (*diechne*) Jonas Röricks-son Falk, claimed that they had been trothplighted and that Jonas had given her a spoon and two silver rings. In addition, she produced a letter written by him, stating that he wished to fulfil the marriage. The consistory allowed her to be churched as a respectable woman, but they did not forget the couple. Some weeks later Jonas Falk appeared and promised that he and his 'trothplighted wife' Ester would solemnize their union the following day.⁴⁹⁴

The chapter of Västerås seems to have been particularly reluctant to church women unless these had solemnized their marriage. A lansquenet (*Landzknecht*) had two years previously contracted with a woman with whom he had also had a child. Nevertheless, all this time the woman had not been churched nor 'could be churched before he was willing to follow with solemnization'. It was agreed that the couple would solemnize their union on the Sunday following New Year's Day and she would be churched immediately before the ceremony.⁴⁹⁵ The policy of the Lutheran Church concerning churching was thus forcing trothplighted couples on the defensive. In comparison with the strictness of the chapter of Västerås regarding solemnization as a precondition to churching, the practice of the chapters of Uppsala and Stockholm seems to have been somewhat more liberal and better in harmony with the traditional Swedish marriage process.

⁴⁹³ Lempiäinen, *Lapsensynnyttäjien*, 55–59.

⁴⁹⁴ ULA, UDP, 22.4.1596, 115; SStA, SDP, A I:1, 4.6.1600 and 29.6.1600, 170, 172. See also SStA, SDP A I:1, 16.2.1600?, 163; ULA, UDP, 28.1.1596, 104. Lempiäinen, *Lapsensynnyttäjien*, 183; Leneman – Michison, *Sin in the City*, 63.

⁴⁹⁵ VDA, VDP A I:2, 28.12.1598, 5v. See also VDA, VDP A I:1, 16.12.1597, 46v.

The late sixteenth-century Swedish clergy's position as guardians of their parishioners' morality resembles that of late-medieval French parish priests honouring the virtuous and exhorting the sinners to repentance and penance. "The priest's power resided in his role as policeman of the social boundaries and categories made visible and real through the administration and regulation of the ritual."⁴⁹⁶ But the Swedish post-Reformation practice was more branding, as even the churching rites themselves were designed to underline the distinction between virtue and vice.

Adorning Brides with a Difference: The Crown Offence and Prenuptial Fornication

The Church started to insist on the distinction between honest and dishonest parturients in the later sixteenth century so as to emphasize the role of matrimony. The distinction between honest and dishonest brides became also increasingly significant in the course of the sixteenth century. As elsewhere, it was an old custom in Sweden that, while maidens had their hair uncovered, they were distinguished after their marriage through the wife's veil with which they covered their hair. The same custom applied also at the wedding. Unmarried women kept their hair flowing and were entitled to wear crowns on their wedding day, provided that they were honest and virgins. The obvious model was the Holy Virgin, generally depicted with a crown, and certain medieval illustrated manuscripts of the *Sachsenspiegel*, for example, depict the wreath as a symbol of virginity.⁴⁹⁷ In the Arboga town court records from 1469 there is a mention of a certain Fasbjörn, who was disputing over a shed with Jon Fasbjörnsson, who might have been his own son. Fasbjörn disapproved that Jon had lain with his maidservant, had a child with her and, in spite of this, had her marriage solemnized in church (*vigias*) her head uncovered (*barhoffde*). Evidently Fasbjörn thought that the blemished maid's hair should have been covered.⁴⁹⁸

⁴⁹⁶ Rieder, "The Implications of Exclusion," 78.

⁴⁹⁷ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 106. On the origins of the custom and its role in various regions, see also Frensdorff, "Verlöbniß," 82; Roper, "Going to Church," 88; Carlsson, *Jag giver dig min dotter*, I, 224–231; Brozyna, *Ecclesiastical Courts*; Ritzer, *Formen, Riten*, 72, 74, 77–79, 110–111, 135–146; Levin, *Sex and Society*, 94–95; Heikinmäki, *Suomalaiset häätävät*, 266.

⁴⁹⁸ 30.10.1469, *AST I*, 316. Likewise, according to medieval manuals, maidens were to be barchanded at the wedding ceremony outside the church door, while widows were

Even elsewhere in Europe, it was thought that female sexual offenders were to cover their hair. An immoral woman was also forbidden to use the headdress (*dok*) of the respectable burgher's wife and other honest women. The sixteenth-century privileges of Stockholm strictly forbade this and prescribed forfeiture of such misleading garments, but this may have been the practice even in the Middle Ages.⁴⁹⁹ Olaus Magnus claims that only maidens whose virtue was unblemished were allowed to wear a crown on her wedding day in emulation of the Holy Virgin. The couple came to church and the bride, upon whose head the crown with priestly blessing had been attached, came to the altar to take her place by the groom's side in torchlight. The use of bridal crowns at the solemnization was well liked by the people. The congregations often owned the precious wreaths or crowns made of gold or gilded metal. Hiring them, as well as clothes and textiles, out to brides was a source of revenue for the parishes at least since the early sixteenth century, possibly even earlier.⁵⁰⁰

Although the practice may have introduced earlier, some manuscripts of the 1442 law from the 1570s prescribed penalties for the fiancé who had first impregnated his bride and then married in church with the bride wearing either a wreath or a crown. In such a case, the fiancé had to pay a forty-mark fine divided between Church, the king and the hundred. In addition he had to give the Church half a *lispund* (4.25 kg) of wax.⁵⁰¹ In 1583 the synod of Strängnäs ordered that widows and 'loose women' were not to wear a crown or wreath at the solemnization, but a married woman's wimple (*dok*). Simultaneously the bishop of Växjö voiced the complaint that in the region unsuitable brides were being ornated as 'here has no distinction been made between a honest maidenly bride, widow, sluts or 'loose women', for all of them have wanted to have the full bridal decorations (*brudaskrud*) without any discretion or modesty'. Thereafter brides were to be adorned as they

supposed to wear gloves, Carlsson, *Jag giver dig min dotter*, II, 13, 32; Molin – Mutembe, *Le rituel*, 81–82, 89–90. See also the Sarum Missal, in *Love, Marriage, and Family*, 263.

⁴⁹⁹ Graham, *The Uses of Reform*, 49–50; Michison – Leneman, *Girls in Trouble*, 103–104; 29, Erik XIV's privilegier (12.4.1563) and 17, Johan III:s stadgar (10.3.1570), *Stockholms stads privilegiebref I*, 61, 76; 25.9.1475, *SST I*, 28.

⁵⁰⁰ Olaus Magnus Gothus, *Historia om de nordiska folken* [1555], III, 95, 104, 106; 118, *BHBR*, 196; 17.12.1544, *HSRH II*, 259; Synod of Strängnäs 1584, s. 14.

⁵⁰¹ Thomson, *Otidigt sängelag*, 35–37.

deserved: a honest widow as was fit, similarly loose women and sluts as was fit, but not wearing a wreath.⁵⁰²

Soon the offence of having a marriage solemnized under false colours was called *kronbrott*, i.e. wearing a crown when one was not a virgin. By the early seventeenth century at the latest, the 'crown offence' was linked to the punishment of prenuptial fornication.⁵⁰³ In Vadstena in 1604, for instance, Lasse the Taylor was fined 5 *dalers* for '*krono brutt*'.⁵⁰⁴ The 1617 decision of the Diet of Örebro forbade all brides whose grooms had 'injured' them before church wedding, to wear a crown at the wedding. These non-virgin brides were to cover their hair in the fashion of married women and wear a wreath instead of a crown on their heads.⁵⁰⁵ Moreover, those betrothed couples, who 'began their marriage with immorality (*otukt*)' and did not stay continent until the wedding, were fined one *daler*, which went to the hospital. The pecuniary fine was combined with public humiliation, as the priest was to read out their sin in the pulpit, asking on their behalf for the friendship of God and the parishioners. Those without money had to be on public display in the church porch on two Sundays in addition to being publicly reconciled with the parish.⁵⁰⁶

The priest was thus made to count the months between solemnization and the birth of the first child: the couple risked a fine if the child was born less than nine months after solemnization.⁵⁰⁷ Occasionally couples were fined for prenuptial fornication even when parturition had taken place during the ninth month after solemnization. The problem was naturally to assess whether or not the child had been born prematurely. Difficult cases could be submitted to the scrutiny of the chapter: if, for example, the child had been born in the eighth month and the parents denied prenuptial fornication. In 1572 the synod of Uppsala discussed the question and, basing their rule on foreign authorities, deemed that a child born seven months after the wedding (*septimo mense post nuptias*)

⁵⁰² Synod of Strängnäs 1583, *SSA II*, 5; Synod of Strängnäs 1584, *ibid.*, 13; Circular of the diocese of Växjö 1584(?), *Undersökningar och aktstycken*, 53.

⁵⁰³ 30.10.1469, *AST I*, 316. See also Synod of Uppsala 1611, 3, *SSA I*, 25; Kyrkoordning för Vexjö Stift 1619, *ES VIII*, 601–602.

⁵⁰⁴ 30.4.1604, *VST*, 346.

⁵⁰⁵ Om echenskap, 14, *Biskop J. Rudbeckius' kyrkio-stadgar*, 19; Thomson, *Otidigt sängelag*, 26–27.

⁵⁰⁶ Thomson, *Otidigt sängelag*, 24–25. See also Lennartsson, *I säng och säte*, 88. The Västerås statutes insisted that the fine going to the parish church and hospital was at least two *dalers*, Om echenskap, art. 13, *Biskop J. Rudbeckius' kyrkio-stadgar*, 19.

⁵⁰⁷ For Germany, see Ozment, *When Fathers Ruled*, 115.

was to be considered legitimate.⁵⁰⁸ In Scotland the evidence of the midwives was used to determine whether the newborn was full-term or premature.⁵⁰⁹

The distinction between chaste and unchaste bridal couples began also to show in other ways besides the bridal apparel. In the end of the seventeenth century the bishop of Turku insisted that only unblemished couples could be married in front of the altar, while couples guilty of prenuptial fornication were to stand in the aisle.⁵¹⁰ This distinction was obviously inspired by the norms regarding the churching of respectable and immoral mothers. The Swedish and Danish rules concerning prenuptial fornication largely resembled the German principles.⁵¹¹ The increasingly orthodox Swedish Lutheran Church was thus responding to the Counter-Reformation's call for control and punishment of the wicked.

There is no Swedish evidence of the late sixteenth-century German custom of forcing women, guilty of prenuptial fornication, to wear a mock wreath of straw when paraded publicly and shamefully through the streets.⁵¹² Moreover, in Sweden as in England, there was '[v]ery little shame or disgrace... attached to bridal pregnancy' and as mentions of prenuptial fornication or bridal pregnancy in slander cases were extremely rare, obviously such references had very little or no power to offend.⁵¹³ Many rural areas were indeed slow to abandon their customs as the pattern of sexual cohabitation during betrothals and delayed solemnizations was deeply rooted in Swedish agrarian society.

4.8 Summary

The Swedish tradition of parental consent written down in secular laws was reinforced by the Protestant dogma, particularly Luther's texts. Although in some Lutheran regions like Hohenlohe, where contracts entered into without parental consent were systematically annulled and

⁵⁰⁸ Lempiäinen, *Piispan- ja rovastintarkastukset*, 372–373; Synod of Uppsala 1572, *Bidrag till svenska kyrkans historia*, 27.

⁵⁰⁹ Michison – Leneman, *Girls in Trouble*, 86–87, 108; Leneman – Michison, *Sin in the City*, 64.

⁵¹⁰ Lempiäinen, *Piispan- ja rovastintarkastukset*, 183.

⁵¹¹ Thomson, *Otidigt sängelag*, 108–109.

⁵¹² Roper, "Going to Church," 88.

⁵¹³ Ingram, *Church Courts*, 230.

the children punished, the Swedish application was more traditional. The consent of both the principal parties and their parents was required, but as the former were to obey their parents and the latter were not allowed to force their children, the situation remained somewhat unclear, especially if the union had been consummated. The legislation was equivocal, and the practice similarly so. Marriages contracted without parental consent were not automatically considered null and void and the courts tried to mediate between the parties. Consummated trothplights were rarely annulled at the insistence of the parents of one party, and in such cases the trothplight may have lacked formality. The Swedish ecclesiastical courts did not become automatic instruments of patriarchal control although the evidence suggests that the practice was becoming stricter in the course of the seventeenth century. By concentrating more draconian punishments on the officiating clergy, the Swedish patriarchs expected to be more successful in restraining their Romeos and Juliets, who would have increasing difficulties in finding a willing accomplice from among the men of cloth.

Young men came to feel these changes in attitudes more keenly. Unmarried girls and women regardless of their age had traditionally been under guardianship in Sweden, but now especially noble young men were beginning to feel the limitations of their freedom to marry.⁵¹⁴ Probably the concession first made to the nobility for increased patriarchal power was a means of rewarding noblemen for their efforts both in war and administration in ensuring that Sweden would become a great power. A noble *paterfamilias* could hardly be expected to concentrate on his duties far from home if he had to worry about the possibility that his children, once less closely guarded, would rush into unpremeditated misalliances that could ruin the prospects of the whole family. Even in rural regions the tendency was for marriages between social equals, which also explains the interest of parents in the marriages of their daughters and sons. Social equality was also of importance to the whole household, the farm and its economy.⁵¹⁵ Moreover, in a relatively equal community, premarital sexual relations did not increase sexual criminality, but rather created marriages, either voluntarily or through family or ecclesiastical pressure.⁵¹⁶

⁵¹⁴ See also Robisheaux, "Peasants and pastors," 297.

⁵¹⁵ Pykkänen, *Puoli vuodetta*, 184–186, 207–209.

⁵¹⁶ Aalto, *Kirkko ja kruunu*, 206–207.

In the latter part of the sixteenth century the Swedish clergy established a stricter discipline of the marital and non-marital sexuality by checking up on infants about to be baptized and their mothers who were to be churched. A clear difference was made between married or betrothed mothers and those who had given birth to illegitimate children as far as rites were concerned, as vice should be denounced and virtue commended. In this aspect the Swedish practice resembles that of the Reformed Church of Scotland, which effectively exercised its authority through baptism. The special evil in late sixteenth-century Scotland was the presence of Catholic clerics providing parents of illegitimate children with less humiliating alternatives and means of escaping detection and punishment. As it was useless to waste effort on the Catholic priests, the Church concentrated on the parents, whose children were irregularly baptized. In addition, it insisted on the rebaptism of the child and on public penance for witnesses of such irregular baptisms.⁵¹⁷ In Sweden, both the regular clergy and the parents were targeted. Moreover, prenuptial fornicators were differentiated from honest brides by their apparel at the wedding. Those couples that were found guilty of the 'crown offence', i.e. the bride passed herself off as a virgin although she was already pregnant, were fined.

The attempts to transform marriage formation to a pious and serious ceremony, submitted to ecclesiastical control and supervision, was also a goal of the Swedish Lutheran Church. However, as the making of marriage, the Swedish marriage process, had been clearly defined by medieval secular laws which were in force until 1734, the Lutheran Church, like the Catholic Church before it, had to face this fact and accept it with good or bad grace. Yet the popular wedding and courting customs, like the hen parties, the noise and 'excesses' of the wedding feast or night-courting,⁵¹⁸ which did not belong to the legal stages of marriage, were easier targets for the Church. The Lutheran Church had some latitude in defining the making of marriage through the Church Ordinance, decisions of various diets and synodal statutes. This room for manoeuvre it used energetically and with considerable success to

⁵¹⁷ Graham, *The Uses of Reform*, 178–179.

⁵¹⁸ By night-courting I mean *nattfrieri* (Sw.) or *yöstely* (Fi.), customary in Finland, Norway and central and northern Sweden up until the nineteenth or early twentieth century. In the summer young men visited young girls who slept in the outbuildings and occasionally were invited to spend the night there, Söderlind, "Svenska," 3–5; Gaunt, *Familjeliv*, 23–34; Johansen, "Marriage or Money," 28. For French Savoy, see Flandrin, *Sex in the Western World*, 83.

enforce more effective control over the marriage process and sexual criminality. But as a whole, the Swedish Church's success in uprooting traditional marriage customs was, nevertheless, much slower and more modest than that of its Scottish counterpart.

From the late sixteenth century onward increased efforts were made to reduce the marriage process to the betrothal and wedding in church, with a distinct emphasis on the latter. The Church admitted that betrothal followed by consummation amounted to matrimony, but it insisted on a punishment if a wedding did not follow consummation. In Sweden, where marriages were often clandestine in the eyes of the Church, the practice of starting cohabitation after betrothal or exchange of future consent was something men could take advantage of. A number of men, especially vagrants, servants of the nobility, soldiers and artisans, 'married' their sexual partners through betrothal or trothplight and sexual intercourse somewhere along the road. Abusing the customary practice was indeed further facilitated by the delay or absence of the solemnization of marriage. Moreover, although the post-Reformation Swedish Church acknowledged the validity of the betrothal or trothplight, followed by intercourse, as marriage (although the expression *matrimonium praesumptum* was not used by the courts), it could also dissolve such unions as divorce had been made possible.

But Sweden was not the only land where changes in matrimonial law came slowly and where the Reformation had only a limited effect on the making of marriage. In fact, scholars have played down the impact of the Reformation on marriage law. Even in countries embracing Protestantism most marriage law remained practically unaltered.⁵¹⁹ English matrimonial law is the best-known example of continuity after the sixteenth-century change of religion. It changed very little after Henry VIII broke with Rome, and the canon law of marriage received no great blows before the Hardwicke Act in 1753 and the Divorce Act of 1857. But the Swedish case is not parallel to the English. In England the church wedding had become the norm already in the High Middle Ages, although clandestine marriages continued to haunt the ecclesiastical courts until the mid-eighteenth century.⁵²⁰ The English Crown had long accepted the Church's jurisdiction in matrimonial issues, and the secular laws did not challenge ecclesiastical marriage formation.

⁵¹⁹ E.g. Harrington, *Reordering marriage*, 276–278.

⁵²⁰ Stone, *Road to Divorce*, 51–137, 368–382.

In medieval Sweden it had been accepted since the thirteenth century that the power to regulate the impediments to marriage belonged to the ecclesiastical jurisdiction. However, an alternative way of making a marriage had been established in Swedish secular law and practice, and this notion lived on despite the Reformation and the advent of Protestantism. Simplifying the matter somewhat, in England continuity meant the continuation of the canonical making of marriage, while in Sweden the emphasis was on secular marriage formation.

During the seventeenth century, the Church continued on all fronts its campaigns to have engagements performed by a priest, the period between trothplight and solemnization minimized, solemnization be a part of every marriage, sexual relations and cohabitation commenced only after solemnization and the popular courting or marriage customs curtailed. This corresponds to the fact that the Lutheran Orthodoxy was also in its zenith in the seventeenth century. The grip of the central government on local communities tightened simultaneously. The legal machinery was developed considerably in order to further this objective. Another hallmark of the century was the growing severity of sentences of crime, including those for sexual offences. This was largely due to the fact that local courts were stripped of their discretion to the advantage of the royal Courts of Appeal and ultimately the king.

Betrothed couples were also receiving stiffer punishments for sexual relations before solemnization although their union was reckoned marriage. The Church and the Crown joined in putting pressure on the old notion of marriage as a process and insisting on the necessity of a church wedding before cohabitation. The growing role of university studies and legal professionalization also contributed to the importance of Roman law as a means of systematizing and interpreting Swedish law. The Swedish marriage process and learned law did not fit very well together: the property exchanges relating to marriage had to be performed before the marriage proper according to Roman law. Matrimony was increasingly being perceived as a single act, the solemnization performed by a priest, by the Church and now also by the legal professionals. The legal consequences of the marriage process were slowly melting away.

CHAPTER FIVE

CONCLUSION

5.1 *Marriage Formation in Sweden, 1200–1600*

From the Middle Ages up until the end of the research period and even much further, marriage formation in Sweden was seen as a process constituting of several legal acts. At its shortest, the process generally took months to finish, while delays in arranging the wedding could prolong it by many years. The process involved several stages and legal acts, each of which involved various duties or rights, for example as regards property rights or guardianship. Marriage formation through a series of steps probably helped to leave a more lasting imprint of the creation of a new couple in the collective memory, and it may have helped to introduce the couple in the community. The collective features in Swedish marriage formation were obvious: publicity and formality in several of its stages were essential in a traditional society, in which literacy was rare, the existence of a legal contract and its content was proven with the testimony of witnesses or guarantors present at the ceremony. The betrothal, an agreement of future marriage between the bride's marriage guardian and the groom, ensured the assent of the kin through the insistence that relatives of both parties attend the collective ceremony. The maximum publicity of the transfer of the bride to the wedding house, the wedding and the subsequent bedding were also presumed. As matrimony determined future ownership of land—commodity *par excellence* in a rural society like Sweden, where the land was largely owned by yeomen farmers—formalities and publicity made essential contributions to the legitimacy of the union and any possible children the couple might have. Moreover, not only were contracts ritualistic, but formalism was also one of the characteristic traits of the Swedish medieval law of procedure, in which oaths were the main method of proof until the seventeenth century.¹

¹ Letto-Vanamo, *Käräjäyhteisön oikeus*, passim; Almquist, *Den svenska processrättens historia*, 34–35.

If the Swedish marriage process could be characterized as formal and collective, the attributes of canonical marriage formation could be characterized as informal and individualistic. In the eyes of the Church, when a couple that was free to marry exchanged mutual marriage vows in the present tense, an indissoluble sacrament was created. Parental consent, witnesses and solemnities added to the 'honesty' of the union and were thus recommendable, but they were irrelevant for the validity of the union. Consummation was immaterial, although it had some bearing on its indissolubility. After 1215, the Church insisted on the reading of the banns and benediction in church, but disregarding solemnization was no invalidating defect of form. In medieval and Renaissance Florence, also a region with strong secular marriage customs, burial was a prime religious rite and the priest gave more often 'the last *vale* than he did blessings for newlyweds'.² No doubt this would also be an appropriate characterization of the medieval Swedish vicar.

It has been argued that the canonical emphasis on consent pushed important issues, such as sexual relations, reproduction and family interests, 'to the periphery of marriage law'.³ Even property issues were irrelevant in the ecclesiastical notion of creating the conjugal bond. Thus, the delicacy and sophistication of the Church's doctrine were inappropriate in a poor and peripheral country like medieval Sweden. Family and property, especially the well-protected ancestral land, the concrete realities and lifeblood of the society, were not valued sufficiently by the 'ecclesiastical model'. In this sense, the introduction of an alien legal transplant like the formless and private marriage contracted by words alone into a legal culture like medieval Sweden, where formal and witnessed legal acts were the norm, was bound to provoke changes, especially as the Church was backed up by a superior administrative, legal and educational machinery. But it is important to remember that although the reception of the canonical marriage doctrine was nearly complete in medieval Sweden, the making of marriage was equally regulated by secular norms. Nevertheless, like other legal transplants, even the canonical notion of marriage formation came to interact with the 'receiving' legal system.⁴ In the course of the Middle Ages canon

² Trexler, *Synodal Law*, 69.

³ Brundage, "Impotence," 423.

⁴ See also Watson, *Legal Transplants*, 27.

law came to modify the Swedish system and was in turn modified by the surrounding legal environment and societal realities.

Although ecclesiastical solemnization had found its place in the Swedish marriage process and was becoming customary in many regions, this development was far from complete. Often marriages, though duly witnessed and public, were still clandestine in the eyes of the Church. Sweden was by no means exceptional in experiencing a relative failure to force all couples to have the banns read before the wedding. In certain parts of Germany, for example, the banns had been replaced by a so-called bridal examination which, when performed by the priest immediately before the wedding, was not a sufficient substitute for the banns.⁵ Although in Italy marriage before a notary had been accepted as a valid and unclandestine way of contracting marriage, it was being considered insufficient by more zealous prelates. Canon law allowed certain regional variations of the same themes, as discussed in the introduction, and this appreciation would to some extent be accurate as far as medieval Sweden was concerned.

In the late Middle Ages it was obvious that the Swedish marriage process was undergoing considerable change. Although the public act of betrothal retained its importance as evidence of parental consent, its position was being eroded by the less formal and less solemn act of trothplight. Trothplight appears to have been the Swedish equivalent of the Church's *sponsalia de futuro*. While the betrothal originally actively involved the women's legal guardian and the suitor, and the bride's role was essentially a passive walk-on part, the trothplight was a personal act shared by the bridal couple. As trothplight was an outgrowth of the canonical *sponsalia*, it was influenced by the Church's emphasis on the active participation of both in administering the sacrament and tying the personal conjugal bond between the spouses. The woman was perceived as a more independent actor who was to be legally responsible for her own actions. The Swedish statute that made women legally responsible for all crimes she committed should be seen as another milestone in this evolution towards individualism. An associating question involved responsibility for being betrothed to several persons simultaneously.

The consent of both principles, or at least their presence, especially the bride's, at the betrothal was introduced in the Swedish laws.

⁵ Roper, "Going to Church," 68.

However, Sweden remained possibly the most patriarchal of the Scandinavian kingdoms in failing to adopt any active legal means of freeing women from their legal guardians' powers at a certain age or in case of misuse. Although the Swedish wedding process was not as such contrary to medieval canon law, it and its side effects—cohabitation, prolonged betrothals, certain vagueness between sexual crime and marriage formation, delay or absence of ecclesiastical rituals and explicit present-tense consent—ran in some respects clearly against the Church's long-term objectives. The marriage process was tolerated, but with time it became first discouraged, then actively resisted, first by the Catholic Church and later by the Lutheran Church.

Children were labelled according to their birth, and the disadvantages of illegitimacy became especially pronounced through the actions of the Church. Ecclesiastical dogma required black to accentuate white: the position of illegitimate children, especially adulterines or 'whorechildren', deteriorated so as to make a difference between good and evil, right and wrong, blessing and curse, matrimony and crime. This policy had been initiated in medieval Sweden by the Catholic Church, but the distinctions and differentiation was perfected by the Lutheran Church in the sixteenth and seventeenth centuries. After the Reformation, when ecclesiastical solemnization became increasingly common, the Church started to monitor more closely the rites of churching and baptism. This gave impetus to the public categorizing of brides, children and their mothers. In a relatively egalitarian community this was probably of lesser consequence for the parties themselves. However, when the Swedish peasantry began to be increasingly stratified, the humiliating and branding policies of the Church started to have their effect. The wealthier land-owning peasants chose increasingly to abandon the older customary ways in order to distinguish themselves from the landless country folk.

The canonical system has been described as a success in regularizing the unions of the laity and thus diminishing the risk of inheritance disputes.⁶ From a Swedish point of view, the advent of canon law hardly reduced the opportunities to shake the established and expected division of inheritance or to litigate about rightful ownership. In some instances the Church rather created more legal arguments to use against the validity of a marriage or the lawfulness of an heir in comparison with

⁶ Pedersen, *Marriage Disputes*, 152.

the traditional Swedish system. The flexible Swedish marriage process took into consideration the position of children born to the betrothed couple, later even of children conceived under promise of marriage. The secular law stated unequivocally that children born to a betrothed couple were legitimate and able to inherit although a wedding had never been organized or ecclesiastical solemnities were lacking. Although many sixteenth-century cases have been preserved where rival heirs wished to challenge the legitimacy of the children referring to their parents' lack of priestly benediction, the argument was unsuccessful.

The Catholic Church's success in transforming Swedish medieval marriage formation has not been rated very highly by some scholars. These scholars have considered it ironic that in the course of the Middle Ages, the Catholic Church, with its ambitious ideals, could not fundamentally alter local marriage customs, while the Lutheran Church with its more popular attitude brought about significant changes in the tradition.⁷ Seen as a whole, this assessment of the reception of Catholic marriage doctrine is somewhat unfair. Although marriage formation remained much as before, the Church's perceptions on consent, impediments and indissolubility had to be reckoned with. Moreover, Lutheran marriage doctrine relied heavily on canon law. The followers of the Reformers were able to build on the foundations that the Catholic Church had established and develop further its policy of the ecclesiastical control of marriage pursuing the same goals as the Catholic Church.

Their Lutheran successors would two centuries later still be fighting the same evils associated with customary marriage practices. The clerical frustration at its powerlessness was demonstrated in some extreme early seventeenth-century attempts to insist that an ecclesiastical wedding ceremony was compulsory for a valid marriage. The enforcement of such norms would have indeed signified an abrupt break with the past and more quickly undermined the popular wedding process. The decision of the clergy, however, was contrary to the secular law. Therefore, the old practice continued and the clergy could only fall back on its traditional remedies tried and true: admonishing and enacting, teaching and preaching. The survival of the marriage process of the medieval laws until the eighteenth century played an important role in this. Had the legal reforms proposed by King Charles IX been enacted in the

⁷ E.g. Gaunt, *Familjeliv*, 62–63.

early 1600s, Swedish marriage law would have been thoroughly changed more than a century earlier than it actually was. It would seem that the marriage process still corresponded with the notions of the majority of the people. Even the contemporary proposals of the so-called Rosengren Commission, consisting of judges and lesser nobility, followed the medieval laws more closely than the royal proposals.

Although the Reformation introduced the possibility to terminate marriage through divorce, divorce has been seen as ‘quintessentially an act both individualistic and anarchic’, requiring neither parental assent nor advance publicity, and thus contrary to the communal Protestant marriage ideology.⁸ In Sweden, where inherited land was especially protected and stayed within the kin after divorce, divorce could hardly threaten the control of marriage or community interests, even in an economic sense. Although it never encouraged divorce, the community preferred a clean break and a new start rather than permanent ill will and conflict. The number of unions terminated by divorce was relatively small and these marriages probably foundered either because of prolonged desertion, adultery, or continuous quarrels that disturbed the peace of the community. From a practical and pragmatic view, it was much better to stabilize the situation and allow a new union.⁹ Moreover, the possibility to break consummated betrothals and divorce gave the Swedish marriage process more flexibility. Not only could matrimony be initiated flexibly, it could also be terminated at any stage of the process, even after its completion.

The emphasis on marriage as the antithesis of sexual crime was part of the Church’s teaching in the dogmatic sphere. In the Middle Ages, the focus of the Catholic Church had not only been on non-marital sexual activity but also on interspousal sexual relations, partly monitored in the internal forum through confession and penance, partly in the external forum of the ecclesiastical courts. Nevertheless, after the Reformation the Swedish Church completely lost interest in what happened between husband and wife in the marriage bed. The focus shifted to the supervision and condemnation of non-marital sexuality. With the intensification of the control of sexual crime in the central Swedish regions beginning in the latter half of the sixteenth century, the

⁸ Safley, “Civic Morality,” 177.

⁹ Korpiola, “Lutheran Marriage Norms,” 147–153. Cf. Ariès, “The indissoluble marriage,” 148–150, 153.

Swedish Lutheran Church came to notice what the medieval Catholic Church had come to observe earlier. Marriage formation as a process, as perceived by Swedish society, was more of a stumbling block than a useful tool to the Church. This stress meant in fact that the learned view of seeing matrimony as an act rather than a process was gaining ground. Even in the Middle Ages, the clergy had been the eager proponent of marriage as a single act. Once the co-operation between the Church and the secular authorities was functioning properly from the late sixteenth century on, the effectiveness of the control system had real possibilities to reform popular perceptions. However, the difference between the Scottish and Swedish experiences is that in Scotland the Church had simultaneously launched a vigorous attack on popular marriage customs. By the 1590s the campaign had been proven largely successful in uprooting the irregular 'handfast marriage' and imposing ecclesiastical solemnization before the couple started to cohabit.¹⁰ In Counter-Reformation France, for example, popular marriage rituals became unacceptable for three reasons: for their form, which was considered scandalous or dishonest, for their power to legitimate or censure and for the religious conceptions that they expressed, which were labelled superstitious or pagan.¹¹

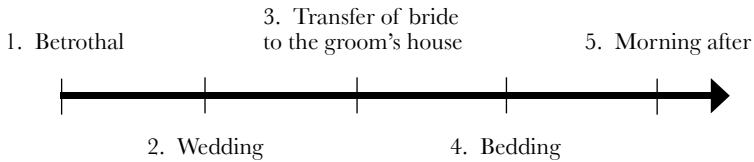
In the century after the onset of the Reformation in Sweden, continuous attempts were made to have people solemnize in church, have the priest perform the trothplight and curtail the period between engagement and wedding. Although it is impossible to find out how successful these measures were in numbers or percentages of the population who followed the ecclesiastical ideal, one need not doubt the long-term influences of the campaign on values and mentalities. However, a segment of the society persisted in its resistance to solemnization, responding only to force.

The Lutheran Church developed a new system of supervising the courting and marriage process. As the birth of a child revealed to the world that the couple was having sex, the Church used baptism as a means of establishing paternity. The next step was to determine the nature of the relationship of the parents: whether they were clearly married, single, or somewhere in between. The answer determined the

¹⁰ Graham, *The Uses of Reform*, 122–124, 281–282; Michison – Leneman, *Girls in Trouble*, 54, 122.

¹¹ Burguière, "Le rituel du mariage," 644–645.

Stages of the Swedish Marriage Process



NB. Figure out of timescale as the interval between betrothal and wedding could be months or even years, while the rest took place within twenty-four hours.

1. BETROTHAL

- if the bride persistently refused him, the groom was entitled to abduct her
- if the bride was abducted by another, the groom was entitled to a fine as plaintiff
- children from the union of bride and groom were considered legitimate
- infidelity to fiancé(e) was punished as adultery
- ‘friend gifts’ became the property of the recipient
- in the Late Middle Ages: gifts were given by groom to bride and possibly *vice versa*

2. WEDDING

- executive act: father gives away his daughter to groom

3. TRANSFER OF THE BRIDE TO THE GROOM'S HOUSE

- dowry irreversible (depending on law)
- creation of joint property (depending on law)
- at some point before the bedding the morning gift was given (Town Law)

4. PUTTING THE COUPLE TO BED

- ‘friend gifts’ given to the bride’s legal guardian’s became irreversible
- dowry irreversible (depending on law)

5. AFTER THE FIRST NIGHT TOGETHER

- morning gift given (Law of the Realm)
- the groom became his wife’s legal guardian

procedure and conditions under which the mother was churched. A marked distinction had to be—and was—made between honest and dishonest women. Judging by the witnesses and evidence presented to the clerics of marriage promises on the one hand and by the subterfuges employed by women on the other hand, this means was successful. The same applied to brides who had enjoyed the joys of matrimony prematurely. They were forbidden to be adorned like virgin brides at the solemnization, and those who did so were punished with fines. The synodal statutes of the later seventeenth century systematically and repeatedly opposed certain displays of collectivity in popular marriage customs: hen parties were too rowdy and disturbed good order, while collecting bride help from the surrounding countryside came to be thought of as inappropriate begging. Thus some traditional features of collectivism in marriage formation were being increasingly perceived as unsuitable, boisterous and disruptive by the Swedish Church and crown.

5.2 *Why did the Traditional Swedish Marriage Process Persist for So Long?*

Scholars who have been impressed by the degree of acceptance of the Church's marriage dogma in the Middle Ages have observed that by that time the Church had been 'dropping water on the stone for a thousand years'.¹² In contrast to regions like Southern Italy, where Christianity influenced the laws since the Roman Empire, or Northern France, England and Germany, which were Christianized during the Age of the Great Migrations, the Catholic Church came to Sweden very late, in the second millennium. This late introduction of the Catholic marriage dogma in Sweden has been mentioned as one of the reasons for the persistence of traditional marriage customs.¹³ The canonical doctrine of matrimony reached Sweden mainly in its classical form as it had recently been formulated by leading canonists and popes. In this respect the reception of canon law was very swift in medieval Sweden. But the Church was coming into a country that was rapidly developing into a centralized state. Perhaps this partially explains one of the features that marks and distinguishes Sweden, namely the fixing of the customary marriage norms to the secular laws, which after the

¹² Brooke, *The Medieval Idea*, 141.

¹³ Carlsson, *Jag giver dig min dotter*, II, 7.

laws had centuries later been changed, continued to live on as customs. A true *longue-durée* phenomenon.

Popes such as Alexander III, Innocent III and Honorius III were moulding the Swedish Church and its law as they were being structured. The almost simultaneous recording of Swedish customary law thus enabled contemporary ecclesiastical norms to penetrate and reform Swedish marriage law, except for the secular marriage process. But, as has been said of medieval Welsh law, true to a lesser degree also for Sweden, the secular law ‘had not yet conceded that the law of marriage was the proper sphere of the canonists’.¹⁴ All over Europe local law, *ius proprium*, though theoretically separate and superior to *ius commune*, was under considerable pressure from learned law, especially canon law, through the powerful and prominent machinery of the Church. In the fringes of the Christian world, the reception of learned law through the Church and its legal system was also a force that remorselessly unified and standardized even customary law in the field of matrimony and legitimacy in the course of the Middle Ages. Even Maurizio Lupoi, who argues for an early medieval ‘European common law’, thinks that the Church functioned as the main driving force behind the legal ‘unification’ of the Early and High Middle Ages.¹⁵

The scope for regional practices was narrowing in the later Middle Ages. Concessions that had previously been tolerated were later frowned upon when the Church’s control over the more ‘dogmatic issues’, such as freedom of consent and the words of marriage, had been established. Moreover, papal decrees may have tended to apply the law more from an Italian perspective, thus standardizing and harmonizing local practices or customs and indirectly, and perhaps unwittingly, unifying the *ius commune* in the manner of the present-day EU Court of Justice. It is doubtful that late-medieval papal bureaucrats and curialists would have preferred to interpret the law in accordance with local parlance, spurning the most renowned canonical authorities, or to have gone out of their way to ascertain regional traditions in order to apply the law in the light of *ius particulare* and local customs. While canon law showed consideration to local practices in interpreting the legal significance of, for example, a ring, centralized papal court procedure may well have demonstrated less sensitivity to local custom as a key to interpreting

¹⁴ Charles-Edwards, “Nau kykywedi teithiauc,” 39.

¹⁵ Lupoi, *The Origins*, see esp. 272–282, 434–436.

the facts of a case.¹⁶ In addition, researchers have acknowledged that the late twelfth- and early thirteenth-century centralization of the Church and its legal system, the codification of its laws and the growth of canonical jurisprudence caused the standardization of custom and the reduction of its importance as a legal source.¹⁷ Indeed, even papal decretals put an end to certain local customs in favour of a uniform interpretation of the central marriage doctrine.

Naturally, the Swedish marriage process was not the only one in decline in early modern Europe. Even in Reformation England, one of the most fundamental changes of the structure of marriage rituals was brought about by the decline of spousals or betrothal. This evolution has been attributed to economic development and changes in parental attitudes.¹⁸ In Florence around 1500, 'out of a nuptial ritual that had been extended and dispersed around several poles, there emerged a new, more centralized ceremonial complex, grouped around the *verba de praesenti*—the first indication of the modern marriage that would be instituted definitely by the Tridentine reform'. A similar concentration of the nuptial rituals was also visible in later seventeenth-century Sweden before solemnization was made compulsory in 1734. Unlike in Florence, where the change was brought about by economic considerations and only indirectly by the Church, in Sweden the increased ecclesiastical control of marriage was definitely behind the change. In Florence, the Catholic Church remained behind the scene, while in Sweden the Lutheran Church came to the foreground.¹⁹ In regions, where customary law required the bedding for the creation of the property consequences of marriage, ecclesiastical solemnization seems to have been replacing other legal rituals not only in creating an indissoluble marriage, but also in transferring all the rights linked to wedlock.²⁰ In Sweden this did not take place until the eighteenth century.

But after all that has been said of the reception of canon and learned law, how can we explain, then, the resistance offered by secular perceptions of marriage formation and the slow waning of the traditional customs despite modifications and transformations with time? In

¹⁶ See also Korpiola, "The Two Husbands."

¹⁷ Berman, *Law and Revolution*, 145.

¹⁸ Peters, "Gender, Sacrament and Ritual," 65.

¹⁹ On Florence, see Klapisch-Zuber, *Women, Family and Ritual*, 191–193, quotation on 192.

²⁰ Spierenburg, *The Broken Spell*, 231.

Sweden, the drafting of the provincial laws and later of the royal laws not only recorded customary law, but later also helped to preserve the medieval marriage process by shielding popular marriage formation from ecclesiastical attacks. The medieval laws did not undergo a more extensive change until the 1700s despite abortive attempts to reform them in the early seventeenth century and the ecclesiastical legislation of 1571 and 1686. Obviously, the traditional marriage process still possessed popular appeal. In addition, the recorded and 'frozen' medieval marriage process was set forth in laws that ecclesiastical legislation could not contradict or alter.²¹ This picture resembles that of France, of which it had been said that the fact that the country 'was saved from the massive reception of Roman law which took place in Germany is clearly attributable to the king's success in having the customs recorded in the sixteenth century'.²²

However, this is only one, albeit important factor, as even other, more profound societal factors contributed to this resistance. Both for geographical reasons and because of the predominantly lay-controlled legal system, Sweden was not as susceptible to the influences of learned law as many other countries, and especially marriage law remained largely unaltered between the fourteenth and eighteenth centuries. The revision and updating of matrimonial legislation was hardly a royal priority in the sixteenth and seventeenth centuries. If King Charles IX had had enough political support for his law reforms in the 1600s, the Swedish marriage process would have been curtailed much sooner. Unlike criminal law, which provided the kings with a useful instrument for extending their power at the expense of both the local communities and the aristocracy as well as with an important source of revenue, there were no immediate gains to be expected as long as the system worked and was considered legitimate by the majority of the population.

It had long been asserted that popular mentalities are a *longue-durée* phenomenon and this notion has also gained a foothold in Swedish and Finnish research.²³ Family law and matrimonial law have often been noted for their stability in relation to other fields of law, and their resistance to change has been attributed to a slowness of mentalities

²¹ See also Stock, *The Implications of Literacy*, 56.

²² Olivier Martin in *La coutume de Paris—Traité d'union entre le droit romain et les législations modernes* (1925), quoted in Zweigert – Kötz, *Introduction*, 79.

²³ E.g. Matikainen, *Verenperjät*, 33, 190–192; Carlsson, *Jag giver dig min dotter*, II, 7.

(*trög mentalitet*).²⁴ But this argument misses the mark. No doubt one of the reasons the notion of marriage formation as a process endured so long in Sweden and Finland was that it corresponded to the needs and values of the relatively stable and agrarian population. From a comparative perspective, it has been observed that, as a rule, marriage as an alliance was emphasized most in societies that ‘operated primarily or entirely at the level of the face-to-face community, rather than at the level of at least minimal order-keeping or tax-collecting state’. For people living at a subsistence level, it was rational to have links with other households so as to ensure co-operation and aid in time of natural disaster or blight.²⁵ A flexible notion of marriage formation guaranteed that the farm had labour even when the wedding had to be postponed because of lack of money. Like other ties of kinship and friendship, marriage also helped to preserve and enhance the status of households. Although the Swedish Crown and Church had an increasing interest in regulating the institution of marriage and perhaps also the alliances of the families, the basis features of everyday life for the overwhelming majority of the population remained much the same from the thirteenth to the eighteenth centuries.

Scholars have referred to individualism, a focus on individual freedoms and the autonomy of individual as traits of modern law. The modernization of the family law took place later than in many other fields of law. This development has presupposed the secularization of society especially in the course of the nineteenth century and a differentiation of law from religion, morals and politics. Collectivism and self-sacrifice of the individual were also losing ground in people’s behaviour.²⁶ The longevity of the Swedish marriage process was largely due to its practicality for the common people. The mentalities of the peasantry were not dull, but they were slow to change.²⁷ A further sign of this is the persistence of popular religious and magical beliefs. After the initial Christianization of the Swedes by the Catholic Church, the Lutheran Church combated the popular superstitions and pagan beliefs of the Swedes for centuries especially from the seventeenth century on.²⁸

²⁴ Lennartsson, *I säng och säte*, 157–160.

²⁵ Quale, *A History of Marriage Systems*, 305–306.

²⁶ Nousiainen – Pylkkänen, *Sukupuu*, 8–14, 92–112. See also Ågren, “Individualism,” 233–234.

²⁷ Suvanto, *Yksilö*, 444; Duby, *Love and Marriage*, 138, 194; Kjellman, *Bröllopsgåvan*, 134–139.

²⁸ See also Thomas, *Religion*, esp. 74–75, 797–799.

In the field of cultural history, industrialization had been identified as the ‘real turning-point’, or the end of the lifespan of many ‘tattered’ remnants of medieval institutions.²⁹ The needs of a ever-stratifying rural society, living on in Sweden at least until the early nineteenth and in Finland well until the twentieth century, were the forces behind the slow modernization of marriage formation.³⁰ However, at the same time, the marriage practices in the large Swedish towns were quite different from those of more peripheral rural districts. Time was moving at a different pace in different parts of the country.³¹

This brings us again to the opening passage from Selma Lagerlöf’s *Jerusalem* of this book. In the early twentieth century it might still have made sense to depict Dalarna as a traditional region adhering to time-honoured and outdated values and practices. Yet, the reality of Stockholm and the country at large was already quite different. When Lagerlöf wrote her book, Sweden and Finland were undergoing a decisive transformation. In the early twentieth century, as a result of Nordic co-operation, the modern marriage laws of Denmark, Norway, Sweden and Finland began to emerge. Even here, Finland, the most peripheral and stable of the four, came last. Thus it is hardly surprising that the last remains of the process of marriage formation, namely the morning gift, the special status of betrothal children and of the betrothal/trothplight, were not abolished in Finland until the 1970s and 1980s.

²⁹ Stock, *Listening*, 70–71.

³⁰ See e.g. Häggman, *Perheen vuosisata*, 201–211; Gustavsson, *Kyrktagningsseden*, 239–245, 272–273.

³¹ See also Ollila, “Kulttuurihistorian houkutus,” 51.

ABBREVIATIONS

AST	=	Arboga stads tänkebok
BD	=	Bullarum danicum
Bj.	=	Bjärböarätten, Svenska landskapslagar V
BFH	=	Bidrag till Finlands historia
BHBR	=	Biskop Hans Brasks registratur
BSH	=	Bidrag till Skandinaviens historia ur utländska arkiver
BSKH	=	Bidrag till Svenska kyrkans historia i sextonde århundradet
CEAP	=	Consistorii ecclesiastici Aboensis protokoller
Church Law of 1686	=	Kircko-Laki Ja Ordningi 1686
C. J.	=	Codex Justiniani
Clem.	=	Constitutiones Clementinae
Dig.	=	Digestum
DL	=	Dalalagen, Svenska landskapslagar II
DS	=	Diplomatarium suecanum
E	=	Edsörebalken
ES	=	Ecclesiastique Samlingar
EST	=	Enköpings stads tänkeböcker
FL	=	Formularia Lincopencia
FMU	=	Finlands medeltidsurkunder
G	=	Giftermålsbalken
GFR	=	Konung Gustaf den förstes registratur
GL	=	Gutalagen, Svenska landskapslagar IV
HFKP	=	Handlingar rörande finska kyrkan och presterskapet
HSRH	=	Handlingar till Sverges reformations- och kyrkohistoria under Konung Gustaf I
HL	=	Hälsingelagen, Svenska landskapslagar III
J	=	Jordabalken
JL	=	Jyske lov
JST	=	Jönköpings stads tänkeböcker
Kg	=	Konungabalken
Kk	=	Kyrkobalken

Km	=	Köpmålabalken
KO 1571	=	Svenska kyrkoordningen 1571
KOF	=	Kyrko-Ordingen och Förslag dertill
KrL	=	Kristoffers landslag
LHD 1545–1570	=	Långhundra härads dombok 1545–1570
MEL	=	Magnus Erikssons landslag
MESL	=	Magnus Erikssons stadslag
NKS	=	Norrländska kyrkostadgar från 1500 – och 1600 – talen
Nov.	=	Novellae
RA	=	Riksarkivet
REA	=	Registrum Ecclesiae Aboensis eller Åbo Domkyrkas Svartbok
SD	=	Sveriges diplomatarium
SdmL	=	Södermannalagen, Svenska landskapslagar III
SDP	=	Stockholms domkapitels protokoll
SHD 1601–1651	=	Siuhundra Härads Domböcker 1601–1651
SKA	=	Synodalstatuter och andra kyrkorättsliga aktstycken från den svenska medeltidskyrkan
SkKk	=	Skånska kyrkorätten, Svenska landskapslagar IV
SkL	=	Skånelagen, Svenska landskapslagar IV
SkST	=	Skånska stadsrätten, Svenska landskapslagar IV
SL 1387	=	Söderköpings lagbok 1387
SLL	=	Svenska landskapslagar
SmåL	=	Smålandslagen, Svenska landskapslagar V
SMEMCL	=	Studies in Medieval and Early Modern Canon Law
SRA	=	Svenska riksdagsakter
SRAP	=	Svenska Riks-Archivets Pergamentsbref från och med år 1351
SRL 1734	=	Sveriges Rikes Lag
SS	=	Statuta synodalia veteris ecclesiae sveogothicae
SSA	=	Svenska synodalakter
SST	=	Stockholms stads tänkeböcker
SStA	=	Stockholms stadsarkiv
SVT	=	Suomen vanhimmat tuomiokirjat, see Savon tuomiokirjat and Ala-Satakunnan tuomiokirja
Tj.	=	Tjuvabalken

U	=	Urbotamål
UDP	=	Uppsala domkapitels protokoll
UL	=	Upplandslagen, Svenska landskapslagar I
ULA	=	Upplands landskapsarkiv
ULD 1490–1494	=	Upplands lagmansdombok 1490–1494
UUB	=	Uppsala universitetsbibliotek
VAA	=	Visitation of Archbishop Abraham, see Ärkebis- kop Abrahams räfst
VDA	=	Västerås domkapitels arkiv
VDP	=	Västerås domkapitels protokoll
VgL I	=	Äldre Västgötalagen, Svenska landskapslagar V
VgL II	=	Yngre Västgötalagen, Svenska landskapslagar V
VmL	=	Västmannalagen, Svenska landskapslagar II
VST	=	Vadstena stads äldsta tänkeböcker
X	=	Liber Extra
ÅSD	=	Utdrag ur Åbo stads dombok
ÅSL	=	Ålands saköreslängder
Ä	=	Ärvdabalken
ÖgL	=	Östgötalagen, Svenska landskapslagar I
ÖRM	=	Örebro rådhusrätt och magistrat, A 1 I:1 Domböcker 1590–1603, ULA
AIRF	=	Acta Instituti Romani Finlandiae
BH	=	Bibliotheca Historica
BTP	=	Bibliotheca Theologiae practicae
BÅSH	=	Bidrag till Åbo stads historia
HAik	=	Historiallinen aikakauskirja
HT	=	Historisk Tidskrift
JEH	=	Journal of Ecclesiastical History
JFH	=	Journal of Family History
JLH	=	Journal of Legal History
JMH	=	Journal of Medieval History
JMOH	=	Journal of Modern History
KA	=	Kanonistische Abteilung
KÅ	=	Kyrkohistorisk årsskrift
LHR	=	Law and History Review
MIC	=	Monumenta Iuris Canonici
MS	=	Medieval Studies

PL	=	Patrologia Latina
PMCS	=	Publications of Matthias Calonius Society
RB	=	Rättshistoriskt bibliotek
RIDC	=	Rivista internazionale di diritto comune
SHJ	=	Studia historica Jyväskyläensia
SJH	=	Scandinavian Journal of History
SKHF	=	Skrifter utgifna af kyrkohistoriska föreningen
SMRT	=	Studies in Medieval and Reformation Thought
VCS	=	Variorum Collected Studies
ZRG	=	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte

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Afskrifter ur Vatikan-arkiver, Bullor 1390–1400

Fotostatkopior av medeltida pergamentsbrev i Riksarkivet

Fotostatkopior av pergamentsbrev i Strängnäs läroverksbibliotek.

Hertig Karls registratur (on microcards)

K. H. Karlssons afskrifter: K. H. Karlssons afskrifter från Vatikan-arkivet, Suppliker 1441–1475

Sturearkivet

Svenska prinsars och prinsessors arkiv (on microfilm)

SStA, Stockholms stadsarkiv (Municipal Archive of Stockholm), Stockholm, Sweden

Stockholms domkapitel (SDP)

A I:1 Protokoll 1595–1600

A I:2 Protokoll 1600–1605

ULA, Upplands landskapsarkiv (Regional Archive of Uppland), Uppsala, Sweden

Dalarnas dombok (Kopparbergs län), Domböcker 1544–1559 A Ia:1

Strängnäs rådhusrätt och magistrat

A I:1 Tänkebok 1530–1598

A I:2 Tänkebok 1553–1639

Örebro rådhusrätt och magistrat, A I I:1 Domböcker 1590–1603

Uppsala domkapitels arkiv A I:1, Protokoll 1593–1608 (UDP)

UUB, Uppsala universitetsbibliotek (Library of the University of Uppsala), Uppsala, Sweden

UUB B 46: Latin translation of King Magnus Eriksson's Law of the Realm by Ragvaldus Ingemundi

Summa de ministris: UUB C 46: Laurentius of Vaxala's *Summa de ministris*

VaLA, Landsarkivet i Vadstena (Regional Archive at Vadstena), Vadstena, Sweden
 Linköpings domkapitels arkiv
 A I a:1 Protokoll 1600–1632 (LDP)

VDA, Västerås domkapitels arkiv (Archive of the Cathedral chapter of Västerås),
 Västerås, Sweden
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